## SENATE.

TUESDAY, *February 7, 1905.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. The Journal will stand approved.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, requested the Senate to furnish the House of Representatives a duplicate engrossed copy of the bill of the Senate S. 285, "an act to divide the State of Oregon into two judicial districts."

The message also announced that the House had agreed to the amendments of the Senate to the joint resolution (H. J. Res. 185) authorizing and directing the Director of the Census to collect and publish additional statistics relating to cotton.

### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had approved and signed the following acts and joint resolutions:

On January 31, 1905:

S. R. 94. Joint resolution to enable the Secretary of the Senate and Clerk of the House of Representatives to pay the necessary expenses of the inaugural ceremonies of the President of the United States March 4, 1905; and

S. R. 97. Joint resolution providing for the payment of the expenses of the Senate in the impeachment trial of Charles Swayne.

On February 3, 1905:

S. R. 96. Joint resolution authorizing temporary use of certain vacant houses in square 686 in the city of Washington, and for other purposes.

On February 4, 1905:

S. 6584. An act to incorporate the trustees of the grand encampment of Knights Templar of the United States of America.

On February 6, 1905:

S. 355. An act granting a pension to Sarah Jane Simonds;

S. 3435. An act granting a pension to Mazilla Lester;

S. 5678. An act granting a pension to Margaret McKee Pentland, formerly Margaret McKee;

S. 5971. An act granting a pension to Cordelia Bird;

S. 6193. An act granting a pension to Jacob O. White;

S. 6321. An act granting a pension to Hattie F. Davis;

S. 69. An act granting an increase of pension to Frances C. Brown;

S. 104. An act granting an increase of pension to Abner Tayler;

S. 141. An act granting an increase of pension to James W. Kinkead;

S. 184. An act granting an increase of pension to John Bartlett;

S. 825. An act granting an increase of pension to Jesse Collins;

S. 826. An act granting an increase of pension to John C. Bertolette;

S. 830. An act granting an increase of pension to Thomas H. Muchmore.

S. 1420. An act granting an increase of pension to Gustavus S. Young;

S. 1794. An act granting an increase of pension to Joseph C. Walkinshaw;

S. 2074. An act granting an increase of pension to James A. Harper;

S. 2189. An act granting an increase of pension to Joseph K. Armstrong;

S. 2419. An act granting an increase of pension to Jane M. Black;

S. 2572. An act granting an increase of pension to Thomas J. Lucas;

S. 2707. An act granting an increase of pension to James M. Clemens;

S. 2913. An act granting an increase of pension to Elizabeth F. Given;

S. 2828. An act granting an increase of pension to Phoebe E. Lyda;

S. 3074. An act granting an increase of pension to Isaac Davisson;

S. 3517. An act granting an increase of pension to John B. Hammer;

S. 3635. An act granting an increase of pension to John M. Godown;

S. 3939. An act granting an increase of pension to James Miller;

S. 4075. An act granting an increase of pension to Charles M. Shepherd;

S. 4121. An act granting an increase of pension to James D. Beasley;

S. 4135. An act granting an increase of pension to Jane Francis;

S. 4159. An act granting an increase of pension to George W. Gray;

S. 4239. An act granting an increase of pension to William H. McCann;

S. 4392. An act granting an increase of pension to Samuel Hyatt;

S. 4660. An act granting an increase of pension to Nellie P. Newton;

S. 4691. An act granting an increase of pension to Leonard L. Lancaster;

S. 4722. An act granting an increase of pension to Martin V. Trough;

S. 4760. An act granting an increase of pension to Ezekiel Riggs;

S. 4823. An act granting an increase of pension to Mary Martin;

S. 4888. An act granting an increase of pension to Pierpont H. B. Moulton;

S. 4897. An act granting an increase of pension to Reuben Allred;

S. 5426. An act granting a pension to Henry O. Kent;

S. 5432. An act granting an increase of pension to Elias Stillwell;

S. 5451. An act granting an increase of pension to George W. Benedict;

S. 5455. An act granting an increase of pension to Jeanie G. Lyles;

S. 5509. An act granting an increase of pension to Susie C. G. Seabury;

S. 5523. An act granting an increase of pension to James Minnick;

S. 5527. An act granting an increase of pension to John A. Kingman;

S. 5540. An act granting an increase of pension to Jerome Bradley;

S. 5550. An act granting an increase of pension to Martin Mack;

S. 5568. An act granting an increase of pension to Flora B. Bonham;

S. 5670. An act granting an increase of pension to James W. Stickley;

S. 5698. An act granting an increase of pension to Martin Schubert;

S. 5712. An act granting an increase of pension to Sallie Dickinson;

S. 5727. An act granting an increase of pension to Jesse Woodruff;

S. 5757. An act granting an increase of pension to William A. Luther;

S. 5766. An act granting an increase of pension to Andrew S. Graham;

S. 5802. An act granting an increase of pension to Luther M. Bartlow;

S. 5808. An act granting an increase of pension to William Steele;

S. 5809. An act granting an increase of pension to Cyrus Wetherell;

S. 5812. An act granting an increase of pension to William T. Graham;

S. 5815. An act granting an increase of pension to James McKim;

S. 5841. An act granting an increase of pension to Nelson P. Smith;

S. 5842. An act granting an increase of pension to Thomas G. Parish;

S. 5856. An act granting an increase of pension to William V. Morrison;

S. 5868. An act granting an increase of pension to Mary C. Buck;

S. 5892. An act granting an increase of pension to James McAuliff;

S. 5938. An act granting an increase of pension to Owen A. Willey;

S. 5939. An act granting an increase of pension to George W. Hall;

S. 5940. An act granting an increase of pension to Jason R. C. Hoyt;

S. 5941. An act granting an increase of pension to Alma Yohum;

S. 5943. An act granting an increase of pension to Jared Prindle;

S. 5953. An act granting an increase of pension to Charles P. Thurston;

S. 5958. An act granting an increase of pension to Mary J. Bartlett;

S. 5961. An act granting an increase of pension to Warren P. Tenney;

S. 5975. An act granting an increase of pension to Lucy Lytton;

S. 6004. An act granting an increase of pension to James Hulme;

S. 6074. An act granting an increase of pension to William Smith;

S. 6085. An act granting an increase of pension to Leonard Delamater;

S. 6091. An act granting an increase of pension to William Welch;

S. 6092. An act granting an increase of pension to Elijah W. Gordon;

S. 6094. An act granting an increase of pension to Ephraim W. Harrington;

S. 6116. An act granting an increase of pension to Francis M. Sams;

S. 6130. An act granting an increase of pension to Charles L. Harmon;

S. 6191. An act granting an increase of pension to Charles R. Van Norman;

S. 6192. An act granting an increase of pension to James McGinnis;

S. 6194. An act granting an increase of pension to William S. Moorehouse;

S. 6195. An act granting an increase of pension to Frederick Feigley;

S. 6196. An act granting an increase of pension to William C. Dickinson;

S. 6268. An act granting an increase of pension to Adria M. S. Moale; and

S. R. 88. Joint resolution authorizing the Secretary of War to furnish a condemned cannon to the board of regents of the University of Minnesota, at Minneapolis, Minn., to be placed on campus as a memorial to students of said university who served in Spanish war.

JUDICIAL DISTRICTS IN OREGON.

The PRESIDENT pro tempore laid before the Senate the request of the House of Representatives to furnish a duplicate engrossed copy of the bill (S. 283) to divide the State of Oregon into two judicial districts, and by unanimous consent the request was ordered to be complied with.

STATEHOOD BILL.

The PRESIDENT pro tempore. The Secretary will read the unanimous-consent agreement.

The Secretary read the agreement made January 30, 1905, as follows:

That general debate on the bill H. R. 14749, "An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States," shall close on Monday next, February 6; that on Tuesday next, February 7, immediately upon the approval of the Journal, the Senate will proceed to the consideration of the amendments offered or then to be offered, and that debate upon each amendment shall be limited to ten minutes for each Senator speaking thereon, and that before adjournment on Tuesday a vote shall be had upon the bill and all amendments. This order shall not interfere with the Senate sitting as a court of impeachment.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

The PRESIDENT pro tempore. The bill is in the Senate as in Committee of the Whole and open to amendment.

Mr. PERKINS. In connection with one of the pending amendments I desire to present a joint resolution of the legislature of California referring to it.

The PRESIDENT pro tempore. Is there objection to its reception?

Mr. GALLINGER. I ask that it be read.

The PRESIDENT pro tempore. It will be read.

The Secretary read as follows:

[Telegram.]

SACRAMENTO, CAL., *February 6, 1905.*

Senator GEORGE C. PERKINS,
*Washington, D. C.:*

Assembly joint resolution No. 6, relative to statehood of Arizona and New Mexico.

Whereas the question of joint admission to statehood of the Territories of Arizona and New Mexico is a question now pending before Congress; and

Whereas the peoples of these respective Territories should be allowed to express their desires upon such joint statehood in each Territory separately: Therefore,

*Resolved by the assembly (the senate concurring)*, That we request our Senators and Representatives in Congress to use their influence to have such question submitted to the peoples of the respective Territories separately and in such manner that if a majority of the people of either Territory do object to such joint statehood that the same be not imposed upon them; and further

*Resolved*, That a copy of these resolutions be immediately forwarded by telegraph to each of our Senators and Representatives in Congress and one to the President of the United States.

I hereby certify that the above is a true copy of resolution adopted by the California legislature this day.

CLIO LLOYD,
*Chief Clerk of the Assembly.*

The PRESIDENT pro tempore. The bill is open to amendments as in Committee of the Whole.

Mr. BEVERIDGE. I suppose that the first thing in order is to consider the pending committee amendments that have been passed over. The first of these amendments is on page 5, beginning at line 8 and ending at line 15, inclusive.

The PRESIDENT pro tempore. The amendment will be read.

The SECRETARY. On page 5, line 8, after the word "prohibited," the Committee on Territories propose to insert the following proviso:

*Provided*, That the sale, barter, or giving away, except for mechanical, medicinal, or scientific purposes, of intoxicating liquors within that part of said State heretofore known as the Indian Territory or other Indian reservations within said State be prohibited for a period of ten years from the date of admission of said State, and thereafter until after the legislature of said State shall otherwise provide.

Mr. GALLINGER. Mr. President, I submit the following as a substitute for the committee amendment, on which I desire to be heard very briefly.

The PRESIDENT pro tempore. The Senator from New Hampshire submits an amendment to the amendment of the committee.

Mr. BEVERIDGE. Mr. President, I wish to say a word just at this juncture.

On Saturday notice was given by the Senator from Texas [Mr. BAILEY] that it might be that to-day he would request an extension and modification of the unanimous-consent agreement of the ten-minute rule to permit him to speak twenty minutes possibly, and it was suggested by other Senators and by the chairman of the Committee on Territories that that would be agreeable. That indicated agreement is to be adhered to so far as that Senator is concerned, and I have no doubt there will be no objection to some person who is for the bill occupying the same length of time; but I thought it fair at this juncture to say that, with this exception, the committee does not feel that it should consent to any other modification of the ten-minute rule.

The PRESIDENT pro tempore. The Secretary will read the amendment of the Senator from New Hampshire proposed to the amendment of the committee.

The SECRETARY. After the word "prohibited," in line 8, page 5, substitute a period for the colon and strike out all thereafter down to and including the word "provide" in line 15 and insert in lieu thereof the following:

The manufacture, sale, barter, or giving away of intoxicating liquors within this State is hereby prohibited for a period of twenty-one years after the date of the admission of this State into the Union, and thereafter until the people of this State shall otherwise provide by amendment of this constitution in the manner prescribed herein. Any person who shall manufacture, sell, barter, or give away any intoxicating liquor of any kind, including beer, ale, and wine, contrary to the provisions of this section, is hereby declared to be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by imprisonment for not less than thirty days nor more than one hundred days, and by a fine of not less than $50 nor more than $200 for each offense; and upon the admission of this State into the Union the provisions of this section shall be immediately enforceable in the courts of this State.

Mr. GALLINGER. Mr. President, I gave notice a few days ago of a proposed substitute for the committee amendment which involved in its provisions Federal jurisdiction over this question during the period of twenty-one years. The Senator from Missouri [Mr. STONE] offered an amendment to my amend-

ment which eliminates Federal jurisdiction, but makes it a misdemeanor, punishable by fine and imprisonment, as is stated in the amendment just read. I have incorporated the amendment proposed by the Senator from Missouri in my amendment, and that is the form in which it is now presented to the Senate.

Mr. President, there is a great deal of interest in this matter, not only the proposed new State, but throughout the land as well. I have on my desk this morning from Oklahoma, the proposed new State, various petitions which will indicate how deeply the people feel.

Here is a petition signed by Mrs. J. H. Tannehill and 2,269 other women of Oklahoma, memorializing the Senate that in providing statehood for Oklahoma we shall incorporate in the enabling act a clause excluding the manufacture and sale of al intoxicating liquors. I will not spread this petition out, for the reason that it is 105 feet long and would be a little burdensome.

I have here another petition signed by George H. McChaney and 2,852 other voters, making the same prayer for Oklahoma.

I have another petition from the following churches: Methodist Episcopal Church South, Asher, Okla., 53 members; Salem Missionary Baptist Church, Rocky, Okla., 190 members; Methodist Episcopal Church, Woodward, Okla., 70 members; Missionary Baptist Church, Rock Creek, Okla., 134 members; Congregational Church, Forest, Lincoln County, Okla., 41 members; Rock Island Avenue Methodist Episcopal Church, Elreno, Okla., 230 members, and so on, with a total membership of 3,186 persons, praying that we will not forget to give those people prohibition.

I have another petition from Oklahoma signed by Rev. W. M. P. Ripley and 413 other voters; another petition signed by Mrs. Annela Tigord and 716 other women; and a petition signed by Mr. Odie G. King and 629 young people and children in Oklahoma, praying for prohibition in the new State.

Now, Mr. President, I think if Senators will examine the amendment I have submitted many of the objections that were urged to the original amendment will disappear, inasmuch as Federal jurisdiction, which I think might properly be exercised and which I argued for the other day, has been eliminated, and the amendment simpy provides that our treaty stipulations with these people shall be continued and that they shall not be subjected to the disastrous influences of strong drink.

To be entirely frank, Mr. President, so that the Senate may not be misled, the amendment that has been offered extends prohibition throughout the entire new State. I hope it may be adopted in that form, for the reason that it will be more easily enforceabe, inasmuch as they have courts already in Oklahoma and not any courts in the Indian Territory.

Mr. CULLOM. It extends the time.

Mr. GALLINGER. It extends the time. I trust the proposed substitute may be adopted instead of the amendment submitted by the committee, which amendment, Mr. President, as I showed the other day, will be utterly inadequate, and will not result in the desire that I feel sure the committee itself has to protect these people from the disastrous influences of strong drink.

The PRESIDENT pro tempore. The question is on the amendment to the amendment.

Mr. MORGAN. Let the amendment be read.

Mr. BEVERIDGE. Let it be reported.

The PRESIDENT pro tempore. The amendment will be again read.

The Secretary again read the amendment to the amendment.

Mr. MORGAN. I move to amend the amendment by inserting, after the word "wine," the words "except of domestic growth and production."

The PRESIDENT pro tempore. That amendment would not now be in order. It would be an amendment in the second degree.

Mr. CULLOM. It is not in order just now.

The PRESIDENT pro tempore. It is not in order at this time. It would be in order if the pending amendment to the amendment should be adopted.

Mr. McLAURIN. Mr. President, I have no objection to the prohibition of the sale of intoxicants and strong drink in the State of Oklahoma, if such a State shall be admitted, but I do object to its being done by act of Congress. The Congress of the United States would not undertake to make a law regulating the police power or making police regulations for any other State. Such a law would be declared by the courts to be unconstitutional.

I do not believe that there should be a Union of States of unequal rights. It is a dangerous thing for the Government. It is contrary to the principles upon which the Government was formed. Every State ought to have the rights of every other State when it is admitted into the Union.

I therefore oppose this amendment, not because I am opposed to prohibition, as I said, of the sale of intoxicating liquors or strong drink in the proposed State, but because I do not believe the Congress of the United States ought to pass an act that is to have any force in the newly created State, that could not, under the Constitution, have force and effect in any other State in the Union, if it were attempted to be enacted by the Congress of the United States.

Mr. STONE. Mr. President, I supposed that what the Senator from New Hampshire [Mr. GALLINGER] said in support of the amendment he offers was all that need be said on that subject. I arise not so much to supplement what that Senator said as to answer what the Senator from Mississippi [Mr. McLAURIN] has said, and not so much to answer him as to correct what I think is a misapprehension on his part.

I believe as strongly as the Senator from Mississippi or any other Senator in upholding all the reserved rights of the States. I am as much opposed as any man to invading what all of us understand to be the rights and privileges of the States. But I do not think this amendment open to that criticism. I do not think it would encroach upon any right guaranteed to or reserved by the States. Undoubtedly Congress has the right to prescribe the conditions upon which a Territory shall be admitted as a State into the Union. Unusual conditions, or those which would tend to impair the rights of the State or to undermine our theory of government, ought not to be imposed. But nothing of that kind is involved in this amendment. The thing proposed by this amendment is neither improper nor unusual. The same thing has been done already by different States.

Mr. McLAURIN. Will the Senator allow me to ask him a question?

Mr. STONE. Certainly; only my time is limited.

Mr. McLAURIN. If such an act as this should be applied to the State of Missouri and no other State in the Union, does the Senator think that that would be in accordance with the principles of the Government?

Mr. STONE. Mr. President, I do not think that Congress could now pass an act like this for the State of Missouri and enforce it. I do not think it would be within the constitutional power of Congress to enact a purely police regulation for enforcement within a State. But that is not the question here. It is not proposed to have Congress do that in this instance.

Mr. McLAURIN. Will the Senator allow me to ask him one other question?

Mr. STONE. Certainly; but I ask the Senator to be brief.

Mr. McLAURIN. Yes, sir; I will be brief. Does the Senator think the State of Missouri should have any right that any other State of the Union should not have? In other words, does the Senator from Missouri think that the State of Missouri should have any right that the State of Oklahoma should not have, if it were admitted into the Union as a State?

Mr. STONE. I do not think the State of Missouri should have a single right that the State of Oklahoma should not enjoy to the fullest extent. We are absolutely agreed upon that. Mr. President, the conditions here are peculiar and unusual. The emergency is great for some protective legislation of this kind. What is the proposition before us?

It is that the people of the two Territories shall incorporate in their constitution a provision that the manufacture and sale of intoxicants shall be prohibited, and this is made a condition precedent for the admission of the State. Congress clearly has a right to impose that condition. The thing to be prohibited should be prohibited, as all agree. We have prohibited polygamy and slavery in new States, and why not whisky? Ordinarily I am opposed to sumptuary laws of this kind, but under the circumstances facing us in this instance I believe this amendment should carry.

The people are to vote upon the proposition to put this clause in their constitution. After the admission of the State the people can change the constitution if they wish. Nothing would stand in the way of changing the constitution in this particular, or in any particular, except the question of good faith.

This is not an attempt by Congressional act to impose a police regulation upon the people of the State. We simply require the insertion of this clause in the constitution as a condition precedent for the admission of the State; and after the State is admitted, having started them upon this line, we then leave the continuation of the policy so established to the people of the State. They can continue the prohibition or end it, as they please. We simply start the State on this road.

Mr. President, some legislation of this kind is imperative

because of the peculiar conditions prevailing in those Territories.

Mr. MORGAN. Mr. President, the proviso for which the Senator from New Hampshire proposes a substitute reads as follows:

*Provided*, That the sale, barter, or giving away, except for mechanical, medicinal, or scientific purposes of intoxicating liquors within that part of said State heretofore known as the Indian Territory or other Indian reservations within said State, be prohibited for a period of ten years from the date of admission of said State, and hereafter until after the legislature of said State shall otherwise provide.

If that was extended to the entire State of Oklahoma I would not object to it, but it is applied only to the Indian Territory part of it.

The Senator from New Hampshire has offered a substitute which applies to the entire State. That part of it I approve. I would vote for it but for one expression in it, and that is the expression which seems to be intended to prevent the production of grapes and the manufacture of wine by the people in any part of that State, a very important industry, which we are choking to death, for which the people of this country will have great use after a while, if they have not got it now, to make light wines as a substitute for whisky.

The Senator from Mississippi objects that this is producing an unequal condition between the States of the Union. There is a very distinct affirmation in the bill that these States, when admitted, shall be admitted on terms of perfect equality with the other States in the Union. We all know that the substance of the bill, its provisions in various particulars, was against that declaration, and that if the substance of the bill is voted it is impossible that this State shall be admitted on terms of equality with the other States of the Union. As the vote proceeds these points will come out one after the other, until it will be perfectly obvious and manifest before the whole world that the Senate is admitting by a declaration that these States shall be admitted into the Union on terms of equality with the other States simply to cover up the inequalities we vote into the body of the bill.

Now, there is another provision here that the Senator from Mississippi seems not to have noticed. It is a proviso to the first section:

*Provided*, That nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished)—

I do not suppose they would have much effect after they were extinguished, but it seems to have been thought necessary to kill them even after they were dead—

or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this act had never passed.

If that provision remains in the bill, of course Congress will have forever just the same power over these Indians that it has to-day, to segregate one-half of the State of Oklahoma and keep them under the legislative power of Congress as to the things that now concern the Indians in that Territory.

Mr. President, that reservation of authority over one-half, say, of the population of Oklahoma is not such a thing as can be found in any other constitution of any State or organization, even of a Territory, in the United States. It is an inequality that boldly juts out, and it is utterly inconsistent and absolutely irreconcilable with the idea that these people coming into the Union with these clogs upon them are the equals of the people of the United States, or that they are enjoying the rights of Statehood which we undertake to guarantee to all the balance of the people in that State except these.

I do not understand how it is possible to admit a State into the American Union one-half of whose people shall remain subject to the jurisdiction of the Congress of the United States exactly on the same terms that the Indians of this country are subject to the jurisdiction of Congress at this moment of time.

I do not care to debate the proposition, Mr. President. I have not time to do it. I merely think that the statement of it is enough to arouse the attention of the Senate to an absurdity that we are putting into the bill, that of retaining over all these Indians all the rights of the Government of the United States to control them as at this time for an indefinite period, and thereby subjecting them to inequality and to the loss of their constitutional rights.

Mr. McLAURIN. Mr. President——

Mr. BEVERIDGE. Under the unanimous-consent agreement the Senator has addressed the Senate once. I am sorry to interrupt him.

Mr. McLAURIN. I only——

The PRESIDENT pro tempore. The Senator can not be recognized more than once on any given amendment.

Mr. McLAURIN. I merely wish to make an answer to what was stated by the Senator from Missouri——

Mr. BEVERIDGE. I wish to say for the benefit of the Senator that there is no discourtesy whatever in this proceeding. We are under the ten-minute rule, which was made by the unanimous-consent agreement. I have said that I would consent that it may be suspended in one case only, which was asked for last Saturday, in case that Senator desires it, and, of course, the same time to be allowed to this side, but otherwise the committee could not consent to a further extension of the unanimous-consent agreement. That is what I wanted to explain to the Senator.

Mr. CLAY. I should like to ask the Senator from Indiana a question, with his permission, as to the construction placed on this amendment by the Committee on Territories. The construction placed on the amendment by the committee ought not to be misunderstood. Lines 7 and 8 provide that—

The sale, barter, or giving of intoxicating liquors to Indians are forever prohibited.

The proviso says:

That the sale, barter, or giving away, except for mechanical, medicinal, or scientific purposes, of intoxicating liquors within that part of said State heretofore known as the Indian Territory or other Indian reservations within said State be prohibited for a period of ten years from the date of admission of said State, and thereafter until after the legislature of said State shall otherwise provide.

Now, I want to see if I understand the committee. Do I understand this language to mean that so far as the barter, sale, or giving away of intoxicating liquors to Indians is concerned it is forever prohibited, and that then the question of the sale or barter of intoxicating liquors to other persons than Indians, after a period of ten years, is left to the legislature of that State; that the legislature can not provide at any time for the sale or giving away of liquors to Indians, but it may provide for the giving away or the sale of liquors to other persons than Indians? I desire to ask the Senator if that is the construction the committee places on that language?

Mr. BEVERIDGE. Mr. President, in answer to the Senator from Georgia, and not in my own time at all, I will state that the Senator has substantially stated what I think the language plainly means, and certainly what the committee understands, to wit, that for a period of ten years the sale, barter, or giving away of intoxicating liquors is prohibited as to everybody, and that thereafter it is within the option of the legislature to say whether it shall be given, sold, or bartered away to anybody but Indians, but that as to Indians it is prohibited forever.

Mr. CLAY. Then I will ask the Senator from New Hampshire a question in regard to his amendment. I understand the amendment of the senior Senator from New Hampshire to change the period from ten years to twenty-one years. Do I understand that his amendment simply strikes out the proviso beginning in line 8 and ending in line 15, and leaves then the same provision in the bill in regard to the prohibiton of the sale of liquors to Indians hereafter?

Mr. GALLINGER. Oh, yes; that is absolutely prohibited by Federal law.

Mr. CLAY. Then if the amendment of the Senator from New Hampshire should be adopted it simply strikes out the proviso and does not interfere with the text of the bill?

Mr. GALLINGER. It does not affect the remainder of the text.

Mr. CARMACK. Mr. President, I did not vote for the amendment offered by the Senator from New Hampshire the other day, because I did not believe that the Federal Government could rightly extend the exercise of police power within the boundaries of a State, while I was entirely in sympathy with the object sought to be accomplished by the Senator from New Hampshire, and am willing to go as far as possible to accomplish that end.

We have incurred certain treaty obligations with those Indians with respect to the sale of liquor, and it is the duty of the Government to discharge those obligations. Whenever the Indians become citizens of the United States and of a State, of course all treaties with them are at an end. There can be no such thing as a subsisting treaty between the United States and its own citizens. But so long as that Territory is kept in the condition of a Territory the United States by the exercise of its own police powers may discharge the obligations of the treaties. It can not, of course, surrender its power to another government and then claim the right by reason of the obligation of the treaty. It must keep itself in a condition to perform the obligation of that treaty. To do that, Congress has a perfect right to say to the people of that Territory, "We must prevent the sale of whisky within the Territory, and in order to do that we must keep you in a Territorial condition, or if

you wish statehood in the Union you must give us assurance that you will discharge those obligations."

For that reason I am willing to vote for a provision which will require the people of that Territory upon their admission to statehood to put in their constitution a prohibition of the sale of whisky to the Indians.

Mr. TELLER. Mr. President, I am in thorough sympathy with the purpose of this amendment, if I understand it. I do not for a moment doubt our authority to say to the people of that section of the country that if they want to be admitted they must bring us a constitution prohibiting the manufacture and sale of intoxicating drinks.

With that, Mr. President, my trouble begins. As I said, I have no question about our authority to exact that, and if they do not present such a constitution as we think they ought to, we reject it. But when we have accepted that constitution with that provision in it, and it becomes a State, the question presented is, Can we compel by any method whatever, moral or forcible, the continuance in the constitution of that provision?

Mr. President, I have no difficulty in voting for this proposition, but I have great doubt that this provision inserted in the constitution will do what the mover of it and what many others hope and expect it will do. But I shall vote for it without committing myself to the question of the power of the State of Oklahoma after it is admitted to change it, if it sees fit. That I will leave to the moral sense of the people who insert it in their constitution.

Mr. BAILEY. Mr. President, I shall not vote for this or any other similar provision, because it is a perfectly plain attempt to substitute the will of Congress for the will of the people in this proposed new State with respect to a purely police regulation. There is not a Senator in this Chamber who will venture to declare that Congress could pass any law regulating or controlling the sale of whisky in any State of this Union, yet we take advantage of the peculiar situation of this new State to tell it that unless it does, not its will, but our will, upon a purely domestic matter, we deny it admission to the sisterhood.

I take it that I am one of the few Senators in this body who have publicly and actively supported a constitutional amendment to prohibit the sale of intoxicating liquors in the States from which we come. I not only supported that amendment once, but I would support it as often as it might be proposed, because I am clearly of the opinion that the sale of intoxicating liquors falls within Jefferson's third class of his famous definition of pursuit, and I am persuaded that no man possesses the natural right to pursue an occupation that produces all harm and no good. Such a pursuit ought to be prohibited. If I were a member of the constitutional convention which is to frame the organic law of this new Commonwealth, I would zealously support a provision like this; but I will not vote that Congress shall do by the indirect method of a condition what every Senator confesses it could not directly do. If this kind of legislation is to be continued, then Congress, by imposing conditions on appropriations, by imposing conditions upon other public enactments, can usurp to itself almost the entire police power of the State.

Mr. President, I do not shield myself behind the proposition that I would seek to protect the Indian from the evil consequences of the liquor trade. I would infinitely rather protect the 700,000 white men there than the 20,000 blanket Indians. There is much of maudlin sentimentality about the Indians in the Indian Territory. I regret that it is true; but I know it to be as true as fate that the Indian's doom in that land has been sealed, and sealed by Congress.

When you destroyed his tribal relations, when you repealed the laws that held the white man from his country, you signed the Indian's death warrant. You knew, and I know, that the Indian can no more stand against the advancing tide of civilization than could the snow piled upon our streets remain unmelted in the summer's sun. I do not pretend ability to fathom the inscrutable decrees of fate; I do not pretend to know why it is true, but I know that in legislating for the Indian in that country you are legislating for a day only, yet you are enacting law that may bind and fetter the will of the white American citizens there through all the years to come.

Mr. President, I shall take great pleasure in voting against this amendment.

Mr. CARMACK. Mr. President, I ask that the amendment may be again read.

The PRESIDENT pro tempore. The amendment will be read.

The Secretary read the amendment of Mr. GALLINGER, as modified, to the amendment of the committee on page 5.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from New Hampshire [Mr. GALLINGER] to the amendment of the committee.

Mr. BATE. Mr. President, only a word. I understand that this amendment is a modification of the amendment of the committee as found in the printed bill. As I understand, the only difference is that the amendment of the Senator from New Hampshire increases the period from ten to twenty-one years, but it does not affect the principle at all, for the same principle is involved in ten years now in the bill as in the twenty-one years.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from New Hampshire [Mr. GALLINGER] to the amendment of the committee.

Mr. GALLINGER. Let us have the yeas and nays on that, Mr. President.

The yeas and nays were ordered.

Mr. DANIEL. I ask that the amendment may be again read.

The PRESIDENT pro tempore. The amendment will be again read.

The Secretary again read the amendment to the amendment.

Mr. BACON. Mr. President, that is an exceedingly important amendment, which I think has not been printed.

Mr. CULBERSON. Yes; it has been printed.

Mr. BACON. I beg pardon; I was mistaken. The copy from which the Secretary read was a typewritten copy, and I supposed from that that it had not been printed.

Mr. STONE. A portion of it has not been printed.

Mr. BACON. It has not been printed?

Mr. GALLINGER. I will say to the Senator from Georgia, if I may be permitted, that it is my original amendment, which has been printed, changed in a few words, the amendment submitted by the Senator from Missouri [Mr. STONE] being substituted for a part of my original amendment. It has all been printed, as a matter of fact.

Mr. BACON. As it is impossible to catch the full import of the amendment upon merely hearing it read, I desire to ask if this is intended to be a section of the constitution of the new State which is required as a condition precedent to admission that they shall have in their constitution? Is that it?

Mr. GALLINGER. That is the fact.

Mr. BACON. The language that is used, as well as I could catch it, might be construed by the casual hearer, if not the reader, as a requirement by United States statute.

I simply wish to say for myself, Mr. President, as has been said by a number of other Senators, that I am in thorough sympathy with the desire to do whatever may be required to protect the Indians from the liquor traffic, which I recognize as a great curse to them whenever they are subjected to it, even more so to them than to the white people. At the same time it is impossible for me to vote for the amendment, as drastic as it appears to be, when I have not even had an opportunity to read it. It seems to have the same end in view as the committee amendment. Therefore I shall content myself with supporting the amendment proposed by the committee and shall vote against this amendment.

Mr. FORAKER. I understood the Senator from Georgia [Mr. BACON] to inquire of the Senator from New Hampshire [Mr. GALLINGER] whether this amendment, if it be adopted, is to be a part of the constitution of the new State. I do not so understand it. The bill provides for a constitution and also provides for an irrevocable ordinance. The constitution is one thing, to be voted on by the people, and the ordinance is another thing, to be adopted simply by the convention.

Mr. BACON. I understand, then, that it will not be a part of the constitution, but will be an ordinance, to be ordained by the same authority that is to make the constitution.

Mr. FORAKER. I understood the amendment when it was read to be that kind of a proposition; and I intend to vote against it, Mr. President, because I agree with the contention that has been made, that it is not competent for Congress to undertake to legislate in this way about a purely police regulation or a domestic matter. It is on the legal aspects of the case entirely that my vote shall be cast. I quite agree with other Senators that it is for the people to protect themselves by that kind of legislation, and that it is something we must intrust to them.

The proposition of this bill is to admit this new State on an equal footing with the original States; and it is not competent for us to do that and at the same time restrict them by undertaking to legislate in advance for them about domestic matters.

Mr. HEYBURN. Mr. President, I am in sympathy with the sentiment represented by this amendment, but I am compelled to vote against it, because I do not believe we have power or can exercise power over State courts in the enforcement of laws or ordinances provided for by Congress. When a Territory becomes a State the courts are under the absolute control of the State. It has been held—and it is the law—that it is not

competent for Congress to confer jurisdiction to the extent of compelling State courts to act. Congress may give permission to them to act, but it can not compel them to exercise such jurisdiction. That being the law, then, I can not see my way clear at this time to vote for an amendment providing that the State courts shall enforce this provision relating to a purely domestic matter. We may legislate that United States courts shall have jurisdiction, but we can not provide that the State courts shall exercise jurisdiction. It is purely upon that single objection that I shall be compelled to oppose this amendment, the object of which I am thoroughly in sympathy with.

Mr. MALLORY. Mr. President, in my humble judgment we have no more right to impose the restrictions sought to be imposed on the people of Oklahoma by the amendment proposed by the Senator from New Hampshire [Mr. GALLINGER] than we have to impose those in the one offered by the committee. I think both of them are beyond our moral right. At the same time, Mr. President, I have sympathy with the purpose sought to be accomplished, and I believe that the amendment proposed by the Senator from New Hampshire is in that respect an improvement on that proposed by the committee, and I shall vote for the adoption of the amendment proposed by the Senator from New Hampshire. But, Mr. President, if that amendment should be adopted, I should vote against its becoming a part of the bill, and, in any event, I should vote against either amendment becoming a part of the proposed measure.

Mr. BATE. Mr. President, one of the objections that I have to the bill, for I have many, although I have favored it in some respects, is that this bill unites the Indian Territory with Oklahoma. If the bill provided for the admission of Oklahoma alone, my vote would be in favor of it and against this amendment, but here is the Indian Territory which, under this bill as it now stands, it is proposed to be united to Oklahoma. I want to do everything possible to protect the Indians in this regard, and to that end I would keep them in Territorial form under the control of the United States Government as a Territory. But I object to the union of the two Territories, and think different government is required for Indian Territory to that required for Oklahoma, and on this theory I vote.

Mr. LODGE. Mr. President, I rise to a question of order. I am afraid I misunderstood the rule. Are we not proceeding under the ten-minute rule, and is it not the understanding that each Senator is to speak only once on an amendment?

The PRESIDENT pro tempore. That is correct.

Mr. BEVERIDGE. The Senator from Tennessee [Mr. BATE] has spoken twice.

Mr. SPOONER. Mr. President, a single word upon this amendment. The argument against the amendment seems to me very much like an argument against the bill. On general principles, a people unfitted to come into the Union on an equality, so far as sovereignty is concerned, with the other States, is obviously unfitted to come into the Union at all. There is no doubt of the fitness of Oklahoma to come into the Union as a State; there is no doubt about the fitness of the great mass of the people of the Indian Territory to come into the Union as a State with Oklahoma; but the situation is a peculiar one. It seems to be one calling for a condition somewhat unique, and which would not have been thought of hitherto as to any State.

The power of Congress to impose conditions has been many times, in one way or another, exercised. The Constitution of the United States recognized slavery, but, in some instances, States were admitted upon condition that the constitution which they adopted should contain a provision against slavery, or involuntary servitude. This whole trouble—not all of it, but part of it—is, as has been stated by the Senator from Texas [Mr. BAILEY], due, I think, to the absolutely improvident policy of Congress in dealing with the Indians. So long as the tribal relations were preserved, so long as the Indian remained a ward of the Government, it needed no reservation in a constitution nor in an organic act to authorize the Government of the United States to deal with the subject of the barter and sale of intoxicating liquors to Indians within a State; but when Congress adopted the policy of making every Indian, the moment he received an allotment of land in severalty, a citizen of the United States and a citizen of the State, the situation changed, and the necessities of it, so far as this legislation is concerned, changed.

There are, I am told by my friend from Indiana [Mr. BEVERIDGE], 80,000 Indians in the Indian Territory. No man needs to be told that in the interest of the Indians and in the interest of the white people among whom the Indian is found, so far as it is possible, intoxicating drink must be kept from his lips. There is an Indian reservation, I think, in Oklahoma.

Mr. BEVERIDGE. There are two.

Mr. SPOONER. There are two reservations, the Senator says. As soon as allotments are made to those Indians, if any are to be made, their tribal relation probably ceases and they become citizens of the United States.

The proviso which I find on page 5 is as follows:

*Provided*, That the sale, barter, or giving away, except for mechanical, medicinal, or scientific purposes, of intoxicating liquors within that part of said State heretofore known as the Indian Territory or other Indian reservations within said State be prohibited for a period of ten years from the date of admission of said State, etc.

The line between the two parts of the new State will be an imaginary line. It is an impossibility to protect the Indians in part of a State not a reservation any longer and not under the control of the Government of the United States any longer from this dangerous and inevitable indulgence. To make the sale of liquor free in one part of the State and prohibit it in another part of the State is a vain attempt to secure the object which alone can justify either of these propositions.

So I can see but one way to protect the Indians and to protect the white people in the State of Oklahoma from the free use by Indians of intoxicating drink and the violence and outrages which often follow, and that is for a time to prohibit its manufacture, barter, and sale among the whole people of that Commonwealth. If it were forever prohibited, I would not vote for it. It is with difficulty that one can tolerate the notion that one State in this Union shall be for any period inferior in State sovereignty—I mean in the exercise of the powers confessedly within the sovereignty of a State—to all the other States in the Union; but at the expiration of this period this amendment leaves it free to the people of Oklahoma to change their constitution and to remove this restriction. Under the circumstances, yielding only to a situation which seems to demand it if these people are to be admitted into the Union at all, I shall vote for the amendment.

Mr. CARMACK. Mr. President, I will ask the Senator from Indiana——

The PRESIDENT pro tempore. Has not the Senator addressed the Senate once on this amendment?

Mr. CARMACK. I rise to make an inquiry.

Mr. BEVERIDGE. I am sorry that the committee feels constrained to adhere to the unanimous-consent agreement, except in the instance specified at the beginning of the session.

Mr. CARMACK. Very well.

The PRESIDENT pro tempore. The yeas and nays having been ordered, the Secretary will call the roll on the amendment of the Senator from New Hampshire [Mr. GALLINGER] to the amendment of the committee.

The Secretary proceeded to call the roll.

Mr. DILLINGHAM (when his name was called). I have a general pair with the Senator from South Carolina [Mr. TILLMAN], who, I understand, is detained to-day by illness; but I propose to transfer my pair with him to the Senator from Connecticut [Mr. HAWLEY], and vote. I vote "yea."

Mr. GORMAN. Mr. President, I am aware that there has grown up in this body a custom of transferring pairs, but, as a rule, that has been intended only to apply to questions where we are divided by party lines. In this particular case the Senator from South Carolina——

Mr. LODGE. Mr. President, I ask if debate is in order during the calling of the roll?

The PRESIDENT pro tempore. It is not.

Mr. GORMAN. As I understand, it is a universal rule in the matter of pairs that a statement is in order.

Mr. LODGE. Pairs are a matter only recognized by Senators themselves. I make the point of order that no debate is in order at this stage.

The PRESIDENT pro tempore. The Chair sustains the point of order that debate is not in order.

Mr. GORMAN. I shall seek an opportunity later on to make the statement I was about to make.

Mr. PENROSE (when Mr. KNOX's name was called). My colleague [Mr. KNOX] is unavoidably absent on account of sickness, and will not be present upon any of the votes on this bill or the amendments thereto.

Mr. PETTUS (when his name was called). I have a general pair with the junior Senator from Massachusetts [Mr. CRANE], and therefore withhold my vote.

Mr. SCOTT (when his name was called). I have a general pair with the Senator from Florida [Mr. TALIAFERRO]. I desire to transfer my pair, and ask it to stand during this and subsequent roll calls to-day with the senior Senator from Rhode Island [Mr. ALDRICH].

The roll call was concluded.

Mr. WARREN. I ask if the senior Senator from Mississippi [Mr. MONEY] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. WARREN. Then I withhold my vote, as I am paired with that Senator.

Mr. KEAN. I suggest to the Senator from Wyoming that he transfer his pair.

Mr. ALLISON. My colleague [Mr. DOLLIVER] is temporarily detained from the Chamber on a pressing matter. If he were here, I am quite sure he would vote "yea."

Mr. GAMBLE (after having voted in the affirmative). I ask whether the junior Senator from Nevada [Mr. NEWLANDS] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. GAMBLE. I have a general pair with the junior Senator from Nevada. I have voted in the affirmative, but I will withdraw my vote.

The result was announced—yeas 55, nays 20, as follows:

YEAS—55.

| | | | |
|---|---|---|---|
| Allee | Depew | Kittredge | Penrose |
| Allison | Dick | Latimer | Perkins |
| Bard | Dillingham | Lodge | Platt, Conn. |
| Bate | Dryden | Long | Platt, N. Y. |
| Berry | Dubois | McComas | Proctor |
| Beveridge | Fairbanks | McCreary | Quarles |
| Blackburn | Foster, Wash. | McCumber | Simmons |
| Burnham | Frye | McEnery | Smoot |
| Burrows | Fulton | Mallory | Spooner |
| Carmack | Gallinger | Martin | Stewart |
| Clapp | Gibson | Millard | Stone |
| Clarke, Ark. | Hale | Morgan | Taliaferro |
| Cockrell | Hansbrough | Overman | Teller |
| Cullom | Hopkins | Patterson | |

NAYS—20.

| | | | |
|---|---|---|---|
| Alger | Clark, Mont. | Dietrich | Kean |
| Ankeny | Clark, Wyo. | Foraker | Kearns |
| Bacon | Clay | Foster, La. | McLaurin |
| Bailey | Culberson | Gorman | Nelson |
| Ball | Daniel | Heyburn | Wetmore |

NOT VOTING—15.

| | | | |
|---|---|---|---|
| Aldrich | Elkins | Mitchell | Scott |
| Burton | Gamble | Money | Tillman |
| Crane | Hawley | Newlands | Warren |
| Dolliver | Knox | Pettus | |

So the amendment of Mr. GALLINGER to the amendment of the committee was agreed to.

The PRESIDENT pro tempore. The question is on agreeing to the amendment as amended.

Mr. MORGAN. I move to insert after the word "wine" in the amendment as amended the following words:

except wine of domestic production and manufacture.

Mr. GALLINGER. Mr. President, I desire to say simply a word on the proposed amendment. I am fully satisfied that if the amendment is adopted it will absolutely destroy the prohibition that is involved in the amendment I submitted. If domestic wine is allowed to be sold to the Indians, they will get drunk on it just as much as they would on imported wine or any other intoxicating drink. I hope the amendment to the amendment will not be adopted.

Mr. GORMAN. Mr. President, it is due to the Senator from South Carolina [Mr. TILLMAN], who is absent because of sickness, that I should say for him that he has a general pair with the junior Senator from Vermont [Mr. DILLINGHAM], and that upon this matter, which is not one that divides the Senate upon party lines, he has expressed a desire that his pair should be with the Senator from Vermont alone and should not be transferred.

It is also proper to say that he is aware of the fact that in matters purely political, and possibly others, the right to transfer has been exercised by both Senators, but he hopes that on this occasion and on this question and all the amendments to the bill his pair will stand with the Senator from Vermont.

The Senator from Vermont has transferred the pair to the Senator from Connecticut [Mr. HAWLEY]. Of course the Senator from Vermont has a perfect right to act upon any arrangement he has made with the Senator from South Carolina. It is proper, however, for me to state to the Senate the desire of the Senator from South Carolina, which I have now done.

Mr. SCOTT. Mr. President, my object in rising a few moments ago when my name was called on the roll call was to state my position on this bill. Being out of order at that time, I now desire to say that I paired with the senior Senator from Rhode Island [Mr. ALDRICH], because it is a courtesy I would expect a brother Senator to extend to me were I unavoidably detained from the Senate. As I understand from his colleague and others that he is in favor of this bill as it came from the House, and as I am not in favor of the bill as it came from the House as a whole, I consent to this pair.

If I were permitted to vote I should vote for the admission of Oklahoma and the Indian Territory as a State. I should vote against the admission of Arizona and New Mexico as a State. I make that statement in order to go on record as to my position, as I have no desire to dodge the issue or the responsibilities that every Senator must take upon himself in the passage of the pending bill. Being thus paired, I think it would not be proper for me to vote upon any of the amendments, not knowing how the Senator from Rhode Island would vote. But as it is stated to me that he is in favor of the bill as it came from the House, I shall not vote when my name is called.

Mr. BEVERIDGE. I will say if the Senator from West Virginia desires to do so—that being a matter within his option—it would be perfectly permissible for the Senator to vote upon any amendments as to which he and the Senator from Rhode Island agree.

The PRESIDING OFFICER (Mr. KEAN in the chair). The question is on agreeing to the amendment offered by the Senator from Alabama to the amendment.

Mr. MONEY. Do I understand that the result of the vote has been announced?

The PRESIDING OFFICER. The Chair is unable to hear the Senator from Mississippi.

Mr. MONEY. I wish to know if the result of the vote on the amendment of the Senator from New Hampshire has been announced.

The PRESIDING OFFICER. Announcement has been made of the result of the vote.

Mr. MONEY. I ask unanimous consent of the Senate to state my position, as I am not allowed to vote.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. MONEY. I wish to say that if I had been present I should have voted against the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Alabama to the amendment.

Mr. MORGAN. Let the amendment be stated.

The SECRETARY. It is proposed, after the word "wine," to insert "except wine of domestic production and manufacture."

Mr. MORGAN. Mr. President, I have offered the amendment with a view of trying to protect a great and valuable industry which is now spreading itself all over the United States, producing a yield of millions and millions of dollars to our wealth annually. Why the people of Oklahoma should be prohibited from raising grapes and manufacturing them into wine, when the people in the adjoining States of Texas and California, or anywhere else in the United States, have that permission, I can not understand.

The Senator from New Hampshire [Mr. GALLINGER] seems to think it is necessary, in order to keep some Indians from getting drunk, to exclude from the State every beverage which has any possible chance to intoxicate a man, white or red. If I believed that an Indian, after he has passed through the measure of civilization we are about to pour upon him and experiences the exhilarating influences of the new life, would do like Noah did, raise grapes, make wine, and get drunk, I should not expect any cataclysm to come out in the progress of civilization because he did.

Mr. President, we are carrying prohibition to the extent that it does not prohibit at all. There must be in prohibition some moral force. There must be an opportunity also to gratify the human desire for refreshment in moderately toned alcholic beverages, not strong whisky and brandy and the like, which destroy a man when he drinks them, but more moderate drinks, such as wine and beer.

The people of California raise great amounts of grapes and produce excellent wine; and I have not heard that the people of that State are more liable to intoxication than any other people. In fact, I have frequently passed through that State; I lived in it for a while; and I have never seen a more sober and orderly people than there are in California, and I have been particularly interested in the situation with respect to the effect upon the Indians. Having been a member of the Committee on Indian Affairs, I have traveled through that State among the Indian tribes, and I have never seen an intoxicated Indian in California, and yet wine abounds there.

There is really no danger of any Indian getting drunk on wine, or more than one or two, because wine is generally a more expensive drink than Indians can indulge in. The people are entitled to raise in Oklahoma all the wine they choose to raise or that the soil is capable of raising, and it will not influence the sobriety of the country even among the Indians.

I hope the Senate will not break down by a constitutional prohibition, as proposed in this bill, a great industry in Oklahoma, in order to prevent the possibility of some Indian getting drunk.

Mr. STEWART. Mr. President, this amendment would practically nullify the amendment of the Senator from New Hampshire. I have had some experience with this matter. In California there was a settlement of Italians. They raised grapes and made them into wine. They drank it, and they would not get sober sometimes for days, and the drinking of the raw wine actually killed some of them. It was made of the grapes raised on rich land, using the ordinary table grape, which contains enough fusel oil to be absolutely dangerous. And then, besides, it is very easy to mix it with a little whisky or a little alcohol, and that makes it a very intoxicating drink. I think if we are going to have temperance at all we had better not open this door.

Mr. McLAURIN. Mr. President, I oppose the amendment of the Senator from Alabama [Mr. MORGAN] for the same reason that I opposed the amendment of the Senator from New Hampshire.

I do not believe that Congress, either in admitting a State or in any other act, ought to have any power or authority in regulating the police affairs of a State. I believe when the State of Oklahoma is admitted, if it shall be, it should have as much right and authority and power within its territory as the State of Indiana or the State of Missouri.

It has been said that it is a matter of good faith on the part of the citizens of that State, after they are admitted into the Union, as to whether they will keep the conditions upon which they enter into the Union; that is, that a condition is imposed upon the State of Oklahoma which makes it inferior in its authority to the State of Missouri or the State of Indiana.

The PRESIDING OFFICER. The Senator from Mississippi will please suspend. It is utterly impossible for the Reporter to hear. Conversation on the floor and in the galleries must cease.

Mr. PLATT of Connecticut. Mr. President, it is impossible for the Reporters to hear, I have no doubt, but it is equally impossible for Senators.

The PRESIDING OFFICER. The Chair is aware of that fact.

Mr. PLATT of Connecticut. And Senators who are trying to listen I do not think have been able to understand what has been said during the last five minutes.

The PRESIDING OFFICER. The Chair agrees with the Senator from Connecticut.

Mr. McLAURIN. It has been said that it is a question of good faith on the part of the people of the State of Oklahoma, when it shall become a State, whether they will keep the condition upon which they are admitted into the Union.

If that State should be admitted into the Union under a condition that they shall put in their constitution a provision prohibiting the sale of intoxicating liquors for twenty-one years, it is said that as soon as they become a State in the Union they can repeal that, if they see proper. They may amend their constitution, but so long as they do not amend the constitution, so long as they do not repeal the provision requiring them to keep the conditions upon which they are admitted into the Union, they are not equal in rights to the other States in the Union.

It is admitted by the Senator from Missouri [Mr. STONE] that an act like this would have no binding effect if it were applied to his State, but if there is a condition attached to the admission of Oklahoma that they must prohibit the sale of intoxicating liquors for twenty-one years, or any other number of years, for that matter, while they may avoid it by changing their constitution, if they did so they would do it at the sacrifice of good faith and, you may say, of their honor, because if they sacrifice good faith they sacrifice their honor. Now, then, they must do one of two things. They must be guilty of a breach of good faith or they must remain in the Union for twenty-one years at least unequal in rights to the State of Missouri or Indiana.

If they do the latter, we will have a Union of equal States with unequal rights, because this bill says that the State of Oklahoma and the State of Arizona are to be admitted upon an equal footing with the other States in the Union. I do not believe there ought to be any authority given to legislate for the Indians that is not given to legislate for the white people. I think that the Scotch, and the Welsh, and the German, and the Irish, and the Italian, and the French, and the Spanish, and the Slav, and all the Caucasian race ought to have as much rights in the Territory as the Indians. You give the Indians the right to vote and you thereby say they are capable of self-government—that they may participate in the government of the white people of that State; and yet they are not capable of governing themselves in their own appetites.

I do not believe any State ought to be admitted into the Union with any condition that would permit the Government of the United States, through its Congress, to project itself into the police regulations of that State. I therefore oppose the amendment to the amendment for the same reason that I opposed the original amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Alabama [Mr. MORGAN] to the amendment.

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment as amended.

Mr. CARMACK. I desire to offer an amendment if it is now in order. I do not know whether it is or not.

The PRESIDING OFFICER. Does the Senator propose to amend this amendment?

Mr. CARMACK. I do not know whether the amendment is in order at this time.

The PRESIDENT pro tempore. Will the Senator from Tennessee please state his amendment?

Mr. CARMACK. The amendment I propose is in line 24, after the word "provide," on page 4——

The PRESIDENT pro tempore. That amendment is not in order now. The question is on agreeing to the amendment as amended by the amendment of the Senator from New Hampshire [Mr. GALLINGER].

Mr. BEVERIDGE. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MONEY. Mr. President, I wish to supplement a little what was so clearly and well stated by my colleague a moment ago upon the conditions imposed by Congress to the admission of a Territory to the Union as a State.

I believe there is not a Senator in this Chamber to-day who does not believe that no condition will stand one moment after the State shall have been admitted. It is inconceivable that a Senator should believe that this is an association of unequal States and sovereigns. It has been decided again and again that these conditions amount to nothing whatever.

As for the question of good faith in the observance of a condition which the Congress may see fit to put in the act of statehood, I will say that I would have no respect for the people of Oklahoma and of the Indian Territory if they did abide, one single day longer than they could conveniently get rid of it, the condition imposed. The very fact that people would acquiesce for twenty-one years in having such a condition imposed upon them, creating an inequality in these States, would show they are unfit for statehood at all. If they comply with that, then I will never vote for them to be admitted at all.

But, Mr. President, I do not believe that the people are so incapable of, and so untrustworthy in, managing their own affairs as this condition insinuates. I believe the people of those two Territories are capable of performing all the acts of self-government which any State already admitted can perform. This is a discrimination against them. It is, in fact, a slur upon their capacity for self-government which, if it is true, should exclude them from the Union until they have attained the ability to administer their affairs upon a higher plane than that which they now occupy, according to the belief of a great many members, it seems, of the Senate.

No State should be admitted to the Union except upon terms of absolute equality with every other State, and if a State acquiesces in the imposition of such a condition it is because it is under duress in order to get into the Union, or else it is unworthy of a position as a sovereign in the galaxy of States.

Mr. BACON. Mr. President, as I stated heretofore, I have not the amendment before me, and I desire for information to know whether the amendment adopted was adopted as a substitute for the entire paragraph or only for the committee amendment?

The PRESIDENT pro tempore. For the committee amendment.

Mr. BACON. I desire to say in regard to that matter that I recognize fully the obligation we are under to protect the Indians from the evil of the liquor traffic, if we can do it. For that reason if I had had the opportunity I should have voted for the provision as it was proposed to be amended by the committee, which limited the prohibition to the case of Indians personally, and went still further and prohibited the barter or the selling or the giving of liquor in that portion of the State occupied by the Indians either as their territory or as a reservation in any other part; and if I had the opportunity I should vote for the provision as it is found on the fifth page of the printed bill, which consists in part of the original bill and in part of the amendment of the committee. That provision is as follows:

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that polygamous or plural marriages and the sale, barter, or giving of intoxicating liquors to Indians, are forever prohibited: *Provided*, That

the sale, barter, or giving away, except for mechanical, medicinal, or scientific purposes, of intoxicating liquors within that part of said State heretofore known as the Indian Territory or other Indian reservations within said State be prohibited for a period of ten years from the date of admission of said State, and thereafter until after the legislature of said State shall otherwise provide.

I have now had the opportunity to read the Gallinger amendment and I can not support it.

When it comes, Mr. President, to the question whether Congress will prescribe as a condition precedent to the admission of a State into this Union that it shall for twenty-one years surrender absolutely and irrevocably its right to control its own affairs, in the liquor traffic or anything else, unless it be polygamy, I shall vote in the negative. If I had the opportunity, I repeat, I should vote for the provision as it is found in the printed bill. I can not vote for it as it has been amended by what is known as the "Gallinger amendment," which takes away from the people of the new State the right for twenty-one years to control their own internal affairs. Situated as Oklahoma is, or will be if admitted as a State, if I were a citizen of Oklahoma I would, with its large Indian population, vote for the prohibition of the liquor traffic. But I believe in the principle of local option in determining whether liquor shall or shall not be sold in a community. If the people of a community favor prohibition, it can be made effectual, but if forced on a community against the will of a community, prohibition will be a dead letter; hence the good policy of local option. I am willing to depart from this so far as to impose prohibition so far as the Indians are concerned, because we are under special obligations to protect them from the evils of the liquor traffic.

Mr. FORAKER. Mr. President, I am in entire sympathy with the amendment as reported by the committee, which is limited to the Indian Territory and to Indian reservations that may be found outside the Indian Territory in the Territory of Oklahoma as it is now. I think it our duty to make that kind of an enactment. I was hoping that our action would stop at that point. But inasmuch as the Senate has voted otherwise, to amend that amendment so as to provide prohibition throughout the whole State, and there is no other way than by its adoption to prohibit the manufacture, barter, sale, and giving away of intoxicating liquors to Indians—than by voting for the amendment, I propose to vote for it.

The PRESIDENT pro tempore. The Secretary will call the roll on agreeing to the amendment of the committee as amended.

The Secretary proceeded to call the roll.

Mr. DILLINGHAM (when his name was called). Again I announce my general pair with the Senator from South Carolina [Mr. TILLMAN] and the transfer of it to the Senator from Connecticut [Mr. HAWLEY]. I make that announcement for the day. I vote "yea."

Mr. PETTUS (when his name was called). I am paired on this bill with the junior Senator from Massachusetts [Mr. CRANE]. I make this announcement in reference to all the votes that may be taken hereafter on the bill.

The roll call having been concluded, the result was announced—yeas 52, nays 17, as follows:

YEAS—52.

| | | | |
|---|---|---|---|
| Alger | Cockrell | Hansbrough | Penrose |
| Allee | Cullom | Heyburn | Perkins |
| Allison | Depew | Hopkins | Platt, Conn. |
| Ball | Dick | Kittredge | Platt, N. Y. |
| Bard | Dietrich | Latimer | Proctor |
| Berry | Dillingham | Lodge | Quarles |
| Beveridge | Dryden | Long | Simmons |
| Blackburn | Fairbanks | McComas | Smoot |
| Burnham | Foraker | McCreary | Spooner |
| Burrows | Frye | McCumber | Stewart |
| Clapp | Gallinger | Martin | Stone |
| Clark, Wyo. | Gamble | Overman | Teller |
| Clarke, Ark. | Hale | Patterson | Wetmore |

NAYS—17.

| | | | |
|---|---|---|---|
| Ankeny | Clay | McLaurin | Taliaferro |
| Bacon | Culberson | Mallory | Warren |
| Bailey | Daniel | Money | |
| Bate | Foster, La. | Morgan | |
| Carmack | McEnery | Nelson | |

NOT VOTING—21.

| | | | |
|---|---|---|---|
| Aldrich | Elkins | Kean | Pettus |
| Burton | Foster, Wash. | Kearns | Scott |
| Clark, Mont. | Fulton | Knox | Tillman |
| Crane | Gibson | Millard | |
| Dolliver | Gorman | Mitchell | |
| Dubois | Hawley | Newlands | |

So the amendment of the committee as amended was agreed to.

The PRESIDENT pro tempore. There was an amendment offered by the Senator from Ohio [Mr. FORAKER] on page 28, which was passed over.

Mr. FORAKER. I now offer that amendment, if in order.

Mr. BEVERIDGE. Will the Senator permit me to perfect the bill?

Mr. FORAKER. I do not object. I proposed to offer the amendment now because the Chair called my attention to it.

Mr. BEVERIDGE. Very good.

Mr. FORAKER. I offer that amendment now, if it does not interfere with the Senator's plan in the management of the bill.

Mr. BEVERIDGE. No; all right.

Mr. FORAKER. I propose to insert on page 28, line 19, after the word "question," the words "in each of said Territories," to make the provision with respect to the adoption of the constitution, if it be framed, provide that it can not be adopted except by a majority of the legal votes cast on that question in each of said Territories. Inasmuch as I spoke at some considerable length in behalf of the amendment yesterday, I do not care to take any time in support of it now.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Ohio [Mr. FORAKER].

The amendment was agreed to.

Mr. LONG. I desire to offer some amendments which are satisfactory to the committee.

The PRESIDENT pro tempore. The first amendment sent to the desk by the Senator from Kansas will be read. [A pause.] The amendment as proposed by the Senator from Kansas must have been made to a former print of the bill. It does not agree with the print now before the Senate.

Mr. BEVERIDGE. I should like to have the Senator from Kansas withhold offering his amendments until the committee perfect the bill. There are some small amendments the committee has to offer.

The PRESIDENT pro tempore. Was there any consent given that committee amendments should first be acted upon?

Mr. BEVERIDGE. There was no consent given, but I ask the Senator from Kansas whether he will permit the committee to complete the bill?

Mr. LONG. That is satisfactory.

Mr. BEVERIDGE. I am going to accept the amendments which the Senator from Kansas shall offer.

On page 6, line 11, after the words "*Provided*, That," I move to strike out the words "this act shall not" and to insert in lieu thereof "nothing herein shall."

The PRESIDENT pro tempore. The Senator from Indiana in behalf of the committee offers an amendment, which will be stated.

The SECRETARY. On page 6, line 11, after the word "That," strike out the words "this act shall not" and insert "nothing herein shall;" so that if amended it will read:

*Provided*, That nothing herein shall preclude the teaching of other languages in said public schools.

The amendment was agreed to.

Mr. BEVERIDGE. On page 22, line 24, I move to strike out the letter "s" in the word "governors," so that it will read "governor," and the letters "ries" in the word "secretaries" and insert in lieu thereof the letter "y;" so as to read "secretary."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 22, line 24, strike out "governors" and insert "governor;" and in the same line strike out the word "secretaries" and insert the word "secretary."

The amendment was agreed to.

Mr. SPOONER. I submit to my friend from Indiana if that ought not to be done with the words "chief justices" also?

Mr. BEVERIDGE. No; because there are chief justices.

Mr. SPOONER. There are governors, too.

Mr. PATTERSON. There is only one.

Mr. BEVERIDGE. That is true. The Senator is correct. I move that amendment.

The SECRETARY. In the same line strike out the word "justices" and insert in lieu the word "justice;" so as to read "chief justice."

Mr. BEVERIDGE. That is right. I am much obliged to the Senator.

The amendment was agreed to.

Mr. BEVERIDGE. On page 27, line 7, after the words "*Provided*, That nothing," I move to strike out the words "in this act" and to insert in lieu thereof the word "herein."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 27, line 7, after the word "nothing," strike out the words "in this act" and insert the word "herein;" so as to read:

*Provided*, That nothing herein shall preclude the teaching of other languages in said public schools.

Mr. SPOONER. I ask the Senator from Indiana what difference that makes in the text?

Mr. BEVERIDGE. The difference is merely that this is part of an ordinance, and therefore the words "in this act" are inappropriate. The word "herein" is harmonious with the language employed.

The amendment was agreed to.

Mr. BEVERIDGE. Now the Senator from Kansas can present his amendments.

Mr. LONG. I offer the amendment which I send to the desk.

The SECRETARY. On page 12 strike out lines 23, 24, 25, and to the word "*Provided*," in line 3, on page 13, and insert——

Mr. LONG. I should like the attention of the Senator from Indiana to this amendment.

The PRESIDENT pro tempore. Those amendments would not be in order now. The Senator proposes to strike out by his amendment amendments that have already been agreed to as in Committee of the Whole. The Senator's amendment can only be offered in the Senate.

Mr. LONG. These amendments are satisfactory to the committee.

The PRESIDENT pro tempore. By unanimous consent it might be done.

Mr. GORMAN and others. No.

Mr. BEVERIDGE. I am perfectly willing to accept this amendment, and will do so if in order.

Mr. PATTERSON. There are objections over here. The senior Senator from Colorado [Mr. TELLER] objects.

Mr. BEVERIDGE. I do not know whether the Senator would insist on his objection. The amendments do not go to any policy of the bill.

Mr. TELLER. Let us go on in regular order.

Mr. BEVERIDGE. All right.

The PRESIDENT pro tempore. The amendment will be offered now. It will be stated.

The SECRETARY. On page 12, in lines 23, 24, and 25, and in lines 1, 2, and 3, on page 13, strike out the following words:

Use and benefit of the University of Oklahoma, the University Preparatory School, the normal schools, and the Agricultural and Mechanical College, and the Colored Agricultural Normal University of said State, the same to be disposed of as the legislature of said State may prescribe.

And in lieu thereof insert——

Mr. TELLER. Mr. President, is this amendment in order now?

The PRESIDENT pro tempore. The Chair is rather inclined to think it may be in order now, because it strikes out more than the amendments which were agreed to as in Committee of the Whole. It strikes out some six or eight lines in addition and inserts matter in its place. The Chair at first concluded that it could not be offered now, but on looking at the bill he is inclined to change his ruling.

Mr. TELLER. Let it be read again and let us see.

The SECRETARY. On page 12 of the bill strike out all of lines 23, 24, and 25, down to and including the word "prescribe," in lines 2 and 3, on page 13, and insert in lieu the following:

Use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established or hereafter to be established, one-third; and of the Agricultural and Mechanical College and the Colored Agricultural Normal University, one-third; the said lands or the proceeds thereof as above apportioned shall be divided between the institutions as the legislature of said State may prescribe.

Mr. TELLER. Mr. President, I do not care to debate this particular amendment. The Chair says it is in order; and though I have some doubt about that, I do not care to make any objection. I wish to take advantage of this amendment to say merely a few words on another proposition which is perfectly germane to this discussion.

Yesterday the chairman of the Committee on Territories read an article from a Colorado paper in which it is declared in substance that the water courses and irrigating conditions down there are such that it is necessary that Arizona and New Mexico shall be united. I challenged that statement then, and with the map before me, and with some personal acquaintance with that section of the country, I want to repeat practically what the junior Senator from Nevada [Mr. NEWLANDS] said yesterday.

The water system of New Mexico is as absolutely distinct from the water system of Arizona as it is possible to be. I have before me two maps, one on one page and the other on another. Any Senator who cares to look can see the situation. Taking the Territory of New Mexico, which lies immediately south of the State of Colorado, the Rio Grande River, which rises in the State of Colorado, runs into New Mexico about midway between the east and the west line. It runs entirely through the Territory and comes into Texas at El Paso. The Senator from Indiana yesterday took particular pains to show that the topography of this country requires that these two Territories should be united, and he denied the fact that there was a range of mountains or hills, a series of high plateaus, immediately on the line between Mexico and Arizona.

Mr. President, I have taken the book of altitudes which the Government has published. I will not in ten minutes have time to give the details, but you may start in at the lower line of New Mexico, its southwest corner, and follow it to the northwest corner, where it joins Colorado, Utah, and Arizona, where the four corners come together, and you will find a series of mountains all the way up. The altitudes as given by the Government represent that all the way on that line there is a high piece of ground. There is only one single case I can find on the line where the waters of Arizona run into New Mexico, and then they run out in a few miles back into Arizona. In the northwestern part of the State the San Juan River runs from Colorado into New Mexico and goes out practically at the northwest corner of the State. That is the place where some years ago the Government established a corner for the four Territories. Now, I speak from absolute knowledge. I have stood at that corner. I know the San Juan River does run into the State of Utah and back into Arizona, but at a point where it goes into the Grand Canyon, and it never becomes, so far as that State is concerned, of any use in irrigation until it passes through the Grand Canyon.

In the southwestern part of New Mexico, near the western border, there is a small stream that heads there and becomes ultimately the Gila River, but no part of it is used by the people of that section of country for irrigation. It is too small at that point. It becomes a considerable river as it passes down and enters the grand Colorado River, not a great distance above the town of Yuma, in the extreme southwest part of Arizona, where the Atchison and Santa Fe Railroad crosses the line between New Mexico and Arizona, which is one of the passes. There the line is 7,245 feet above sea level. That is one of the low passes. Now, when you go down to the extreme southern point, where the Southern Pacific crosses the Arizona line, the elevation is about 7,000 feet at Lordsburg. A little distance from the western line of New Mexico, and all the way from the lower part of New Mexico clear up to the Colorado line, I repeat, is of high elevation. It is a narrow strip of country with the watershed running on to the Gulf of California and not to the Gulf of Mexico.

The Territory of New Mexico is on the whole much higher than the Territory of Arizona except on the great plateaus which have been spoken of here, which are about 8,000 feet above sea level. The capital of New Mexico, Santa Fe, is nearly 7,000 feet above sea level, while the capital of Arizona is 2,300 feet above sea level. The town of Phoenix, the largest town in the Territory of Arizona, is on the Salt River, about 1,000 feet above sea level in round numbers, and then the town of Yuma, which is, as I said, in the southwest, is 137 feet above sea level.

Now, taking the whole Territory of Arizona, it is very much lower than New Mexico. The town of Eddy, in New Mexico, which is in the southeast part, and in one of the best sections of that Territory, is three thousand and some odd feet above sea level. It may be said that the entire Territory of New Mexico is above that point.

Now, Mr. President, I want to repeat, with the map before me, with some personal knowledge of this country and the rivers from actual observation, that there is not the slightest possible pretense, or should not be, that the irrigation of one section of that country—that is, Arizona—could interfere with New Mexico. There can be no controversy, because the waters run in a different way. New Mexico must take the water principally from the big river that runs down through her center, starting in the center and going out at the western side about one-third the distance from the Arizona line.

Mr. President, I wanted to say this much because I thought the Senator from Indiana, who has the bill in charge, was misled by the newspaper article. I regret to notice by his speech on this matter and his whole description of the physical condition that if he went down through that country he saw very little of it, or he did not observe, as I think he usually does when he goes through a country. There is that natural divide, Mr. President, between Arizona and New Mexico. It is about 400 miles long. Of course you can not locate a divide on a mountain range exactly so as to take all the water from one side and the other. There will be little bends in the mountains in which the water will rise and run, perhaps, a part of it one way and a part of it the other; but with rare exceptions, and that only in one single case, can you find where any water rises in Arizona and runs into New Mexico. The water running into Arizona from New Mexico originates within 20 or 25 miles of the western line.

All the argument the Senator made yesterday, that nature had

intended these two Territories to be put together, is contradicted by the physical facts that are to be seen in any well-regulated map and ought to be known by every citizen who speaks on the subject; and they are especially known to us western people who have been acquainted with and have felt an interest in these Territories for the last forty years.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. NEWLANDS. Mr. President, I wish to supplement what the Senator from Colorado has said regarding this natural division between Arizona and New Mexico by stating that whilst the region which constitutes this natural barrier is not impassable, whilst it does not consist of abrupt and impassable mountains, yet it is a region that is almost incapable of development because of its altitude and because of the scarcity of the water supply. That region is called the "Great Divide," and is, as the Senator from Indiana says, a plateau broken here and there by high mountains, but it is also a region almost devoid of moisture for the reason that, whilst a few of the streams which flow from this divide toward the east and toward the west take their source in these regions, they are at their source very attenuated streams, incapable of supplying much water, and the volume of water increases lower down. So it is impossible to resort to irrigation in the region of the Great Divide, and, besides, the high altitude prevents that intense cultivation which prevails in lower altitudes, where the clime is more kindly and the warmth of the sun is greater.

I insist, therefore, upon the correctness of my statement made yesterday when I interrupted the Senator from Indiana, that there is a natural division approximating to the present boundary line between Arizona and New Mexico, consisting of this elevated plateau, almost incapable of cultivation, and thus separating by a considerable width the civilization of New Mexico from the civilization of Arizona.

Now, one word with reference to the size of the proposed joint State. The Senator from Indiana insists that the State of Texas is a large State. And yet the people of Texas would not assent to-day to the division of that State into four or five States, sanctioned by the act admitting Texas into the Union. He also insists that though California is a large State approximating the proposed joint State in area, the people of California would not engage in a movement for a division of that State into two States, and he claims that this fact proves that there is no objection to a very large State. I may add also that the State of Vermont has only about 300,000 people, a population only approximating that of New Mexico to-day, yet Vermont would not listen to a proposition of union with New Hampshire. The States of Vermont, New Hampshire, and Rhode Island, all of them combined, will never have a population equal to the future population of the proposed State of New Mexico, and yet none of them would favor a proposition regarding union with any of the New England States. Why so?

One would think that the argument used against the division of the large States would prevail in favor of the union of small States. And yet the large States object to division just as the small States object to consolidation. The reason is that all these States have for a long time exercised autonomy. Their institutions are established within recognized boundaries; their economic operations are fixed; the industries and the activities of each State have become correlated to each other; each State is an individual, and each State, whether large or small, is unwilling to sink or merge its individuality. So it is, though you may present the argument to the small States in favor of union and to the large States in favor of division, neither of them will accept your proposition. Pride in the traditions, the history, and the achievements of each State will prevent. Yet I insist upon it that the States of Texas and of California are to-day too large, and that the administration of government in each one of those States would be better if each of them were divided—Texas into the four or five States contemplated by the act admitting her into the Union, and California into two States by the dividing line at Tehachapi Pass.

So far as California is concerned, it has a stretch of ocean boundary equal to that of twelve or more States, I believe, upon the Atlantic coast. There is a natural division there at Tehachapi Pass, just as there is in the case of Arizona and New Mexico, though not so wide in area. In the State of California there was a feeling that the interests of the southern part of that State were not fairly considered in legislation. The capital was in the northern part of the State, comparatively inaccessible to the people from the southern part of the State. The northern part of the State was humid and the southern arid. The subject of a division of the State has been frequently discussed there, and to-day, as the result of those dissensions in the State over matters arising from its extensive area not permitting of complete self-government that would benefit every section of that State, we have a practical division of the State into two parts, for it has now become the recognized political rule of that State that one Senator shall come from the part north of Tehachapi Pass and the other Senator from the part south of Tehachapi Pass.

So also with reference to Texas. I attended recently an irrigation congress at El Paso, Tex., in the remote western portion of that State, just south of New Mexico. That enterprising town had sent a delegation to the irrigation congress, which had been held in Utah, and there urged the entire West to fix upon El Paso as the meeting place of the next irrigation congress. The entire arid and semiarid region was glad to acquiesce in that arrangement, and the congress was held there—probably one of the most successful congresses that we have had in the history of the irrigation movement. We found that there was a feeling in El Paso, arising from the fact of the lack of recognition of this movement on the part of the eastern part of the State—the humid portion—that El Paso was neglected and alone, that her interests were so distinct from those of eastern Texas that it was difficult to obtain the proper recognition. And whilst feelings of State pride would prevent any effort at division to-day there can be no doubt but that better and more satisfactory local self-government would be secured had this vast area been divided into States of more convenient size.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. McCUMBER. Mr. President, when the Senator from Kansas [Mr. LONG] was making his address the other day, three times I put the question directly to him as to whether or not, in his opinion, the Territory of Oklahoma had sufficient population and its resources were such as to justify the assumption that it would make a great State, one capable of carrying on all of the duties of a State and one that would be a credit both to the State itself and to the nation. Three times the Senator from Kansas avoided directly answering that question as to whether or not, in his opinion, there was a sufficient population. I assume, therefore, Mr. President, that neither the Senator from Kansas nor a single Senator upon this floor to-day can assert that there is not the requisite population within the Territory of Oklahoma, and also within the Indian Territory, to make two great States that would be a credit to this country.

If a Territory has a population to-day of 700,000 inhabitants, and that Territory has such resources as to give assurance that it will maintain a population equal to the average population of the States of the Union, then I want some good, conscientious, sound reason from any Senator why that Territory should not be admitted into the Union as a single State. If it has that population, if it has those resources, I say the State itself is entitled to come into the Union, and the Union is entitled to have the benefit of that State and the representation which she will send to this Congress.

Why, I might ask, do the Senators from New England, with a single exception or two, stand almost solidly against the proposition of having any more States which they might consider as even small States in the Union?

I can understand, Mr. President, why a Senator from New York or a Senator from Pennsylvania might feel that his State did not have the requisite or proper representation in this Senate, but I can not understand how a Senator coming from Vermont, or Maine, or New Hampshire, or from any of those small States, where every legislator is as well acquainted with the boundaries of the several farms in his State as the average legislator from my State or from Texas will know of the boundaries of the counties in his State, should do so.

I admit that they are ideal States, that they are sufficiently small so that they can be conducted more economically than can other States in the Union, and I have never seen the time when the representatives of those States did not on every and on all occasions speak of the grandeur of their Commonwealths; and I admit that what they say is true. I admit that the State of New Hampshire and the State of Vermont are better conducted and more economically conducted than any other States in the Union to-day. They are in all respects ideal, and they who have lived there and who have had the blessings of those conditions now come before the United States Senate and say, "We will have no other small States in the Union." I can not understand why, when Oklahoma has a population of 700,000, Maine of 694,000, New Hampshire of 411,000, Rhode Island of 428,000, Vermont of 343,000, and Delaware of 184,000 inhabitants, they should object to taking in Oklahoma with about 700,000 inhabitants at the present time and with a prospect of having seven millions in less than a century, while the

century which has gone past has only raised the States of New England to which I have referred up to that condition.

These New England States, Mr. President, are not going back. The farm products of Vermont and New Hampshire may not be as great as they have been in the past, but their other products, taken as a whole, combined with their farm products, are greater to-day than they ever have been before in the history of those States. I simply can not see why the Senators from those States should object, therefore, to making a State that in population will be from ten to twenty times—yes, a hundred times—greater than theirs. I can not understand why the State of Delaware, with two Senators, should complain that Oklahoma, only fifty times as great in size as the State of Delaware, should be admitted to statehood and insist that she can not come in unless she is a hundred times as large as the State of Delaware. I can not understand how a State having a population of 343,000 inhabitants, growing naturally slowly, if it is increasing at all, can stand here, knowing the benefits and the importance of a State to the Union, and insist that a Territory that is in its infancy, having 700,000 population, is too small to be admitted into the Union of this great Republic.

Mr. President, there are ten Senators representing the five States I have mentioned. Why do those ten Senators object, and say that a Territory that has a greater population than any one of them contains at the present time shall have but one vote as against their ten in the Senate of the United States?

I believe in reasonably small States. I believe, Mr. President, that the results of legislation in every one of the States shows strongly in favor of the small States of this Union. That being the case, it seems to me that our patriotism should be in favor of producing those better conditions all over the United States, and not have those good conditions, so boasted of by our friends in the East, existing only down in their little section on the Atlantic coast.

Let us take the farm produce of any of these States, and we will find that it will not come up with Oklahoma. Let us take the number of cattle of any of those States, and they will not come up with the number in Oklahoma. Let us take the same things, and they will not measure up with the products of the Indian Territory. They have to-day in the East a greater number of manufactures, but the first industry in every new State and in every new Territory is agricultural, and after they have become more or less densely populated manufactures always follow. The manufacturing industries in Indiana have grown up in the last fifty years. The same may also be said of Ohio and Illinois. So, after fifty years more of settlement, first upon our farms, manufacturing establishments will be all over the Indian Territory, all over Oklahoma.

The PRESIDENT pro tempore. The Senator's time has expired. The question is on the amendment of the Senator from Kansas [Mr. LONG].

The amendment was agreed to.

The PRESIDENT pro tempore. The Senator from Kansas [Mr. LONG] has two or three other amendments which he desires to offer. They would be subject to the point of order and could not be offered, except by unanimous consent, other than in the Senate after the bill has gone to the Senate, but he asks unanimous consent that they may be considered now. With the exception of the first one, they are amendments, the Chair is informed, to which the committee agree. The Secretary will report the first amendment.

The SECRETARY. On page 14, section 10, line 14, after the word "prescribe," it is proposed to insert the following:

And until such time as the legislature shall prescribe the same, this and all other lands granted to the State shall be leased under existing rules and regulations.

So as to read:

SEC. 10. That said sections 13 and 33, aforesaid, if sold, may be appraised and sold at public sale, in 160-acre tracts, or less, under such rules and regulations as the legislature of said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, but the same may be leased for periods of not more than five years, under such rules and regulations as the legislature shall prescribe, and until such time as the legislature shall prescribe the same this and all other lands granted to the State shall be leased under existing rules and regulations, and shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for designated purposes only and until such time as the legislature shall prescribe the same shall be leased under existing rules.

The amendment was agreed to.

The PRESIDENT pro tempore. The second amendment of the Senator from Kansas [Mr. LONG] will be stated.

The SECRETARY. On page 16, section 12, line 11, it is proposed to amend the committee amendment by striking out "one" and inserting "two;" so as to read:

For the benefit of the Agricultural and Mechanical College, 250,000 acres.

Mr. BAILEY. Mr. President——

The PRESIDENT pro tempore. Is there objection to the present consideration of the amendment?

Mr. BAILEY. Mr. President, I desire to join the Senator from North Dakota [Mr. MCCUMBER] in his very praiseworthy attempt to secure for these Territories, soon to become States, and entitled to become States, a fair recognition of their people and their resources; but, in addition to my cordial agreement with all which he has spoken, I am impelled by another consideration to detain the Senate.

Within the last twelve months I have received many letters and telegrams from gentlemen formerly residing in the State of Texas, but who now reside in Oklahoma and the Indian Territory, pleading for the union of these two Territories into a single State. As I can not comply with their request, I feel that I owe it to them, as well as to myself, briefly to state the reasons which have influenced my judgment and which must, therefore, control my vote against the proposition which they have urged me to support.

If it could be contended with any show of reason that either Oklahoma or the Indian Territory were incapable of sustaining a population that could support an efficient State government without a serious burden of taxation I would yield to that argument; but, sir, no Senator who has addressed the Senate in this long debate has ventured to declare that either Territory is so deficient in acreage or so poor in resources that it could not easily maintain an efficient and excellent government for its people. There they are, sir, outlined on the map of your country, and you can join Vermont, New Hampshire, Rhode Island, and Connecticut together and then I can put all four of them down in either Oklahoma or the Indian Territory and still have room left for another State more than twice as large as the least of them.

How will the Senators from those States relish the suggestion that only a great State is fit for association with the others? Suppose some Senator should rise in his place on this floor and declare for the union of Vermont and New Hampshire. The Senators from those States would lift their voices in such indignant protest as this Chamber has not heard for many years; and yet, I regret to say, a Senator from one of those States is an active opponent of fair treatment for these Territories. It comes with bad grace for the Senator from Vermont [Mr. DILLINGHAM] to talk about uniting Territories against their will, because the country is familiar with the history which recites that Vermont herself seceded from the State of New York.

The Senator has not forgotten that when the lawfully constituted authorities of New York sought to enforce the judgment of her courts in what now constitutes Vermont they were resisted, bound to trees, and lashes laid on their bare backs. They called that "administering the beech-tree seal" to titles in Vermont. When by her resistance to the lawful authority on one occasion—

Mr. PROCTOR. Mr. President——

The PRESIDING OFFICER (Mr. CULBERSON in the chair). Does the Senator from Texas yield to the Senator from Vermont?

Mr. BAILEY. Yes.

Mr. PROCTOR. I wish to set the Senator right. It was called administering the "beech seal"—they left out the word "tree"—"with the twigs of the wilderness."

Mr. BAILEY. I am surprised that Vermont left out anything that could be taken in on that or any other occasion; but I am glad to have my statement confirmed, and probably the Senator will confirm another statement which I am about to make, that when they had assembled a legislature on one occasion, a messenger came in haste to inform them that the militia from the State of New York were coming to disperse them, and they hastily adjourned; but before adjourning they adopted a resolution declaring that the laws of God should be in force in that Commonwealth until they had time and opportuity to make better ones. [Laughter.] And yet Vermont, although she resisted the lawful authority of New York, because it was so far from the seat of power, now votes to join two Territories, each capable of making a State six times as great as Vermont herself.

Mr. PROCTOR. Mr. President, I am sorry the Senator from Texas makes this allusion in the absence of my colleague [Mr. DILLINGHAM], to whom he especially refers. In regard to Vermont's secession from New York, I desire to say she never belonged to New York. She was an independent State.

Mr. BAILEY. Certainly the Indian Territory does not now belong to Oklahoma.

Mr. PROCTOR. Mr. President, Vermont, like Texas, was a sovereign State. She adopted her constitution and maintained her independence against the world for fourteen years.

Mr. BAILEY. And against New York in particular. [Laughter.] I understand what the Senator from Vermont means by

his allusion to Texas, and I shall leave unsaid what I intended to say about these Territories to reply here and now to his reference to our State.

THE STATE OF TEXAS.

Mr. President, throughout this discussion we have heard many and varied comments upon the magnitude of Texas. Some Senators have expressed a friendly solicitude that we would some day avail ourselves of the privilege accorded to us by the resolution under which we were admitted to the Union and divide our State into five. Other Senators have seemed to think it a ground of just complaint that I have considered it my duty to oppose the consolidation of two Territories into one State without advocating a division of Texas. The same reasons which will satisfy our solicitous friends that their hope for a division of Texas can never be realized will also relieve me from the charge of inconsistency which has more than once been insinuated against me in the course of this debate.

If Texas had contained a population in 1845 sufficient to have justified her admission as five States, it is my opinion that she would have been so admitted then, because the all-absorbing slavery question—which, happily, no longer vexes us, but which completely dominated American politics at that time—would have led to that result. I will even go further than that, and I will say that if Texas were now five States, there would not be five men in either State who would seriously propose their consolidation into one. But, sir, Texas was not divided in the beginning; Texas is not divided now; and under the providence of God she will not be divided until the end of time. Her position is exceptional, and excites within the minds of all her citizens a just and natural pride. She is now the greatest of all the States in area, and certain to become the greatest of all in population, wealth, and influence. With such a primacy assured to her, she could not be expected to surrender it even to obtain an increased representation in this body.

But, Mr. President, while from her proud eminence to-day she looks upon a future as bright with promise as ever beckoned a people to follow where fate and fortune lead, it is not so much the promise of that future as it is the memory of a glorious past which appeals to her against division. She could partition her fertile valleys and her broad prairies; she could apportion her thriving towns and growing cities; she could distribute her splendid population and her wonderful resources, but she could not divide the fadeless glory of those days that are past and gone. To which of her daughters, sir, could she assign, without irreparable injustice to all the others, the priceless inheritance of Goliad, the Alamo, and San Jacinto? To which could she bequeath the name of Houston, and Austin, and Fannin, and Bowie, and Crockett? Sir, the fame of these men and their less illustrious but not less worthy comrades can not be severed; it is the common glory of all, and their names are written upon the tables of her grateful memory so that all time shall not efface them. The story of their mighty deeds which rescued Texas from the condition of a despised and oppressed Mexican province and made her a free and independent republic still rouses the blood of her men like the sound of a trumpet, and we would not forfeit the right to repeat it to our children for many additional seats in this august assembly.

The world has never witnessed a sublimer courage or a more unselfish patriotism than that which illuminates almost every page in the early history of Texas. Students may know more about other battlefields, but none was ever consecrated by the blood of braver men than those who fell at Goliad. Historians may not record it as one of their decisive battles, but the victory of the Texans at San Jacinto is destined to exert a better influence upon the happiness of the human race than all the conflicts which established or subverted the petty kingdoms of the ancient world. Poets have not yet immortalized it in their most enduring verse, but the Alamo is more resplendent with heroic sacrifice than was Thermopylæ itself, because while Thermopylæ had her messenger of defeat, the Alamo had none.

Mr. President, if I might be permitted to borrow the apostrophe to liberty and union pronounced by a distinguished Senator, I would say of Texas: She is one and inseparable, now and forever. [Applause in the galleries.]

The PRESIDENT pro tempore. Signs of approval or disapproval are not permitted in the United States Senate, and the occupants of the gallery will hereafter refrain.

The Senator from Kansas [Mr. LONG] asks unanimous consent to offer certain amendments at this time. They will be stated.

The SECRETARY. On page 16 of the bill, line 11, restore the original text of the bill; where "two" was stricken out and "one" inserted, strike out "one" and restore "two;" so that it will read:

For the benefit of the Agricultural and Mechanical College, 250,000 acres.

The amendment was agreed to.

The PRESIDENT pro tempore. The other amendments proposed by the Senator from Kansas will be stated.

The SECRETARY. On page 16, line 8, after the word "hundred," at the end of the line insert the words "and fifty;" so that it will read:

For the benefit of the Oklahoma University, 250,000 acres.

The amendment was agreed to.

The SECRETARY. On page 16, line 14, after the words "normal schools," insert the words "now established or hereafter to be established."

The amendment was agreed to.

The SECRETARY. On page 16, line 15, after the word "acres," at the end of the paragraph, it is proposed to insert:

The lands granted by this section shall be selected by the board for leasing school lands of the Territory of Oklahoma immediately upon the approval of this act. Said selections as soon as made shall be certified to the Secretary of the Interior, and the lands so selected shall be thereupon withdrawn from homestead entry.

The amendment was agreed to.

The SECRETARY. On page 17, line 8, after the word "Guthrie," strike out the word "and;" and after the words "Oklahoma City," in the same line, strike out the word "alternately" and insert the words "and one term at Enid."

The amendment was agreed to.

The SECRETARY. On page 17, line 23, after the words "Monday in," strike out the word "June" and insert the word "April;" and after the word "June" insert the words "at Enid on the first Monday in October."

The amendment was agreed to.

Mr. CARMACK. I offer the amendment I indicated a while ago. On page 4, line 24, after the word "provide," strike out everything down to and including the word "State," in line 2, page 25, and insert "in said constitution."

The PRESIDENT pro tempore. The Senator from Tennessee offers an amendment, which will be stated.

The SECRETARY. On page 4, line 24, after the word "provide," it is proposed to strike out the words "by ordinance irrevocable without the consent of the United States and the people of said State" and insert in lieu thereof the words "in said constitution."

Mr. CARMACK. I wish to say just a few words on the amendment. I was very desirous of having the amendment adopted before being required to take a final vote on the amendment of the Senator from New Hampshire [Mr. GALLINGER], or to have some assurance that the amendment would be accepted. I could not vote for the amendment proposed by him with this language in the bill. For that reason I tried then to secure a vote on the amendment, but was not in order. I offer it now.

Mr. DANIEL. Mr. President, it seems to me this amendment ought to be adopted. If it is not adopted the bill will contain a doctrine that has never obtained in the United States, and can never be given any validity by the Congress of the United States. I read it that it may be appreciated by the Senate:

And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State.

Then follow a number of provisions which it is declared shall be contained in the ordinance thus referred to, and these provisions ordained by the State to be are made forever irrevocable in that State or are attempted to be made so by this act of the Congress of the United States.

In point of fact and in legal contemplation this is mere brutum fulmen. This passing body, here to-day and gone to-morrow, can not put a lasso forever around the neck or the heels of the people of any State in the American Union. When General Grant was President a question arose concerning the State of Arkansas, and upon the proposition that the State could not change its government. It was abandoned, and Arkansas did change its government, and so will any State of the American Union change its government, under and subordinate to the Constitution of the United States, which is the paramount authority, regardless of what any passing Congress may choose to put upon our statute book. It merely brings contempt and disregard upon Congressional legislation when Congress reaches out and strives to do something which it is forbidden to do by the Constitution of the United States.

It has been a problem of mankind, Mr. President, from the beginning till to-day how to eat your cake and keep it, too. It has never been solved to the satisfaction of those who wish to do both things. We can not create a State and keep it as a Territory, too. We have it as a Territory. We may treat it as a Territory as long as we please, but we can not put the toga virilis of State manhood, so to speak, upon it and still keep the swaddling clothes of Territorial infancy around it. The moment it becomes a State the Territory ends. You can not have

one community as a State and a Territory at the same time. As no physical body can occupy two places at the same time, so no community can be classified as possessing two different characters of political community. It must be a State or it must be a Territory. If it is a Territory, you can make such provisions as belong and pertain to Territories about it, but what is the propriety of the Congress of the United States creating and setting up a pretense, an unequal State in the American Union, and yet so reluctant to relax its grasp upon it as to try to put around it the arms of Congressional authority and say: "Now, be good, and let us still be your guardian and you still be our ward."

This, Mr. President, is a legislative paradox. It is a patent absurdity, to speak in a legal sense, and it ought to be stricken out of this bill because if it should ever be brought into court the judge would instantly annul it.

It will be observed, Mr. President, that all the temperance provisions which are contained in the amendment offered by the Senator from New Hampshire [Mr. GALLINGER] and those which are contained in the first of the provisions alluded to here are all made dependent upon, and declared to be forever hereafter irrevocable without, the consent of the United States. Were this act to go into operation, with that proposition in this statute, and if it were a valid proposition, we would have this strange and incongruous condition in the United States. There would be forty-five States that could change their constitutions to suit themselves. There will be one anomalous sort of a State that had bound itself, so to speak, in treaty with the Congress of the United States never to change its constitution. There are such things as the inalienable rights of man. A man can not sell himself into slavery. There are also such things as the inalienable rights of States.

A king can not give away his crown, and a State can not pawn and fling away its sovereignty. I do not speak of State sovereignty as if a State were a nation. It is not a nation, but as to some things it retains its sovereignty. Vermont, or Wisconsin, or New York, or Minnesota, or California, or Connecticut, or any State you choose to name, which is to-day a coequal State in the American Union, would defend that sovereign right as quickly as it would defend the sacred right that pertains to statehood or to local community government. As every Senator here represents a State of which he is the spokesman and the champion to defend that equal right, how can he condescend to attempt to deprive of that right even the weakest of those who knock at our door and plead for statehood in equality and in coordinate relation?

It is beneath the dignity of the Senate of the United States. It would be a condescension of the Congress of the United States to attempt to tie this rope around an aspirant for the great dignity of statehood.

The PRESIDENT pro tempore. The time of the Senator from Virginia has expired.

The question is on agreeing to the amendment offered by the Senator from Tennessee [Mr. CARMACK].

The amendment was agreed to.

Mr. BARD. I offer the amendment I send to the desk.

The PRESIDENT pro tempore. The Senator from California offers an amendment, which will be stated.

The SECRETARY. It is proposed to strike out all of sections 19 to 37, inclusive, and to insert in lieu thereof the following:

SEC. 19. That the inhabitants of all that part of the area of the United States now constituting the Territory of New Mexico, as at present described, may become the State of New Mexico, as hereinafter provided.

SEC. 20. That all qualified electors of said Territory, as described in this act, are hereby authorized to vote for and choose delegates to form a convention for said Territory; such delegates shall posses the qualifications of such electors. The aforesaid convention shall consist of seventy-five delegates elected to said convention by the people of the Territory; and the governor, chief justice, and secretary of said Territory shall apportion the delegates to be thus elected from the Territory as nearly as may be equitably among the several counties thereof in accordance with the population as shown in the United States census of A. D. 1900; and the governor shall, within thirty days after the approval of this act by the President of the United States, by proclamation, in which such apportionment shall be fully specified and announced, order an election of the delegates aforesaid, to be held on the tenth Tuesday after the approval of this act as aforesaid; and the proper officials, as now provided by law in said Territory, shall immediately upon the issuance of such proclamation, make, or cause to be made, as the case may be, in time for the election, a supplemental or general registration, as may be necessary, of the male citizens of the United States over the age of 21 years who shall have resided in said Territory for six months, in the county for ninety days, and in the precinct, ward, or election district where they are to vote thirty days next preceding the date fixed for said election, whose names shall be placed upon or added to the great registers, or registration lists, as the case may be, exhibiting the names of the qualified voters of said Territory. And the persons so qualified shall be entitled to be so registered and to vote for delegates to the constitutional convention. Such election for delegates shall be conducted, the returns made, and the certificates of persons elected to such convention isseud, as near as may be, in the same manner as is prescribed by the laws of said Territory regulating elections therein of members of the legislature, save that not more than two judges of each of the election boards holding elections under this act shall be of the same political party. Persons possessing the qualifications entitling them to vote for delegates to the constitutional convention under this act shall be entitled to vote on the ratification or rejection of the constitution submitted to the people of said Territory hereunder, and on the election of all officials whose election is taking place at the same time, under such rules or regulations as said convention may prescribe, not in conflict with this act: *Provided*, That said registration lists shall answer for both or all such elections.

SEC. 21. That the delegates to the convention thus elected shall meet in the hall of the house of representatives of the Territory of New Mexico, in the city of Santa Fe therein, on the fifth Monday after their election, but they shall not receive compensation for more than sixty days of service, and after organization shall declare on behalf of the people of said proposed State that they adopt the Constitution of the United States, whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State—

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship; and that polygamous or plural marriages and the sale, barter, or giving of intoxicating liquors to Indians are forever prohibited.

Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated and ungranted public lands lying within the boundaries thereof and to all lands lying within said limits owned or held by any Indian or Indian tribes, except as hereinafter provided, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States, and such Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands and other property belonging to citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands and other property belonging to residents thereof; that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use; but nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing, as other lands and other property are taxed, any lands and other property owned or held by any Indian who has severed his tribal relations and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, but said ordinance shall provide that all such lands shall be exempt from taxation by said State so long and to such extent as such act of Congress may prescribe.

Third. That the debts and liabilities of said Territory of New Mexico shall be assumed and paid by said State, and that said State shall be subrogated to all the rights of reimbursement which said Territory now has.

Fourth. That provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control; and that said schools shall always be conducted in English: *Provided*, That nothing herein shall preclude the teaching of other languages in said public schools.

Fifth. That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude, and that ability to read, write, and speak the English language sufficiently well to conduct the duties of the office without the aid of an interpreter shall be a necessary qualification for all State officers.

Sixth. That the capital of said State shall temporarily be at the city of Sante Fe, in said Territory of New Mexico, and shall not be changed therefrom previous to A. D. 1910, but the location of said capital may, after said year, be permanently fixed by the electors of said State, voting at an election to be provided for by the legislature.

SEC. 22. That in case a constitution and State government shall be formed in compliance with the provisions of this act, the convention forming the same shall provide by ordinance for submitting said constitution to the people of said proposed State for its ratification or rejection, at an election to be held at a time fixed in said ordinance, which shall be not less than sixty days nor more than six months from the adjournment of the convention, at which election the qualified voters of said proposed State shall vote directly for or against the proposed constitution and for or against any provisions thereof separately submitted. The returns of said election shall be made by the election officers direct to the secretary of the Territory of New Mexico at Santa Fe; who, with the governor and chief justice of said Territory, shall meet at said city of Santa Fe on the third Monday after said election and shall canvass the same; and if a majority of the legal votes cast on that question shall be for the constitution the said canvassing board shall certify the result to the President of the United States, together with the statement of the votes cast thereon, and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitution and government of said proposed State are republican in form, and if the provisions in this act have been complied with in the formation thereof, it shall be the duty of the President of the United States, within twenty days from the receipt of the certificate of the result of said election and the statement of the votes cast thereon and a copy of said constitution, articles, propositions, and ordinances from said board, to issue his proclamation announcing the result of said election, and thereupon the proposed State shall be deemed admitted by Congress into the Union, under and by virtue of this act, under the name of Arizona, on an equal footing with the original States, from and after the date of said proclamation.

The original of said constitution, articles, propositions, and ordinances, and the election returns, and a copy of the statement of the votes cast at said election shall be forwarded and turned over by the secretary of the Territory of New Mexico to the State authorities.

SEC. 23. That until the next general census or until otherwise provided by law said State shall be entitled to one Representative in the House of Representatives of the United States, which Representative, together with the governor and all other officers provided for in said

constitution, shall be elected on the same day of the election for the adoption of the constitution; and until said State officers are elected and qualified under the provisions of the constitution, and the State is admitted into the Union, the Territorial officers of said Territory shall continue to discharge the duties of their respective offices in said Territory.

SEC. 24. That upon the admission of said State into the Union there is hereby granted unto it, including the sections thereof heretofore granted, four sections of public land in each township in the proposed State for the support of free public nonsectarian common schools, to wit: Sections numbered 13, 16, 33, and 36, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken; such indemnity lands to be selected within said respective portions of said State in the manner provided in this act: *Provided*, That the thirteenth, sixteenth, thirty-third, and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this act, but such reservation lands shall be subject to the indemnity provision of this act.

SEC. 25. That 200 sections of the unappropriated nonmineral public lands within said State, to be selected and located in legal subdivisions, as provided in this act, are hereby granted to said State for the purpose of erecting legislative, executive, and judicial public buildings in the same, and for the payment of the bonds heretofore or hereafter issued therefor.

SEC. 26. That in addition to the foregoing, and in addition to all lands heretofore granted for such purpose, there shall be, and hereby is, granted to such State, to take effect when the same is admitted to the Union, 300 sections of land, to be selected from the public domain within said State in the same manner as provided in this act, and the proceeds of all such lands shall constitute a permanent fund, to be safely invested and held by said State, and the income thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

SEC. 27. That nothing in this act shall be so construed, except where the same is so specifically stated, as to repeal any grant of land heretofore made by any act of Congress to said Territory, but such grants are hereby ratified and confirmed in and to said State, and all of the land that may not, at the time of the admission of said State into the Union, have been selected and segregated from the public domain, may be so selected and segregated in the manner provided in this act.

SEC. 28. That 5 per cent of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

SEC. 29. That all lands herein granted for educational purposes may be appraised and disposed of only at public sale, the proceeds to constitute a permanent school fund, the income from which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such common school land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 30. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September 4, 1841, which section is hereby repealed as to the proposed State, and in lieu of any claim or demand by the said State under the act of September 28, 1850, and section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the said State, and in lieu of any grant of saline lands to said State, save as heretofore made, the following grants of land from public lands of the United States within said State are hereby made, to wit:

For the establishment and maintenance and support of insane asylums in the said State, 200,000 acres; for penitentiaries, 200,000 acres; for schools for the deaf, dumb, and the blind, 200,000 acres; for miners' hospitals for disabled miners, 100,000 acres; for normal schools, 200,000 acres; for State charitable, penal, and reformatory institutions, 200,000 acres; for agricultural and mechanical colleges, 300,000 acres; for schools of mines, 200,000 acres; for military institutes, 200,000 acres.

SEC. 31. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said State, by a commission composed of the governor, surveyor-general, and attorney-general of said State; and no fees shall be charged for passing the title to the same or for the preliminary proceedings thereof.

SEC. 32. That all mineral lands shall be exempted from the grants made by this act; but if any portion thereof shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof.

There is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of $2,500,000 for the use and benefit of the common schools of said State. Said appropriation shall be paid by the Treasurer of the United States at such time and to such person or persons as may be authorized by said State to receive the same under laws to be enacted by said State, and until said State shall enact such laws said appropriation shall not be paid. Said appropriation of $5,000,000 shall be held inviolate and invested by said State, in trust, for the use and benefit of said schools.

SEC. 33. That the said State, when admitted as aforesaid, shall constitute one judicial district, to be named the district of New Mexico, and the circuit and district courts of said district shall be held at Albuquerque for the time being, and the said district shall, for judicial purposes, until otherwise provided, be attached to the ninth judicial circuit. There shall be appointed for said district one district judge, one United States attorney, and one United States marshal. The judge of said district shall receive a yearly salary the same as other similar judges of the United States, payable as provided for by law, and shall reside in said district to which he is appointed. There shall be appointed a clerk of said court, who shall keep his office at Albuquerque, in said State. The regular terms of said district and circuit courts shall be held in said district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned for service in both said circuit and district courts. The circuit and district courts for said district, and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district courts of said district, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation now allowed by law to officers performing similar services for the United States in the Territory of New Mexico.

SEC. 34. That all cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the supreme court of said Territory, or that may hereafter lawfully be prosecuted upon any record from said court, may be heard and determined by said Supreme Court of the United States. And the mandate of execution or of further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court, respectively, hereby established within the said State, or to the supreme court of such State, as the nature of the case may require. And the circuit, district, and State courts herein named shall, respectively, be the successors of the supreme court of the said Territory as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same and award mesne or final process therein; and that from all judgments and decrees of the supreme court of the said Territory mentioned in this act, in any case arising within the limits of the proposed State prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States or to the circuit court of appeals as they shall have had by law prior to the admission of said State into the Union.

SEC. 35. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of said Territory at the time of the admission into the Union of the said State, and arising within the limits of such State, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said Territory; and in respect to all other cases, proceedings, and matters pending in the supreme or district courts of the said Territory at the time of the admission of said Territory into the Union, arising within the limits of said State, the courts established by such State shall, respectively, be the successors of said supreme and district Territorial courts; and all the files, records, indictments, and proceedings relating to any such cases shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of the State shall be pending, in any Territorial court in said Territory shall abate by the admission of such State into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district, or State court, as the case may be: *Provided, however*, That in all civil actions, causes, and proceedings in which the United States is not a party transfers shall not be made to the circuit and district courts of the United States except upon cause shown by written request of one of the parties to such action or proceeding filed in the proper court, and in the absence of such request such cases shall be proceeded with in the proper State courts.

SEC. 36. That the constitutional convention shall by ordinance provide for the election of officers for a full State government, including members of the legislature and one Representative in Congress, at the time for the election for the ratification or rejection of the constitution; but the said State government shall remain in abeyance until the State shall be admitted into the Union as proposed by this act. In case the constitution of said State shall be ratified by a majority of the legal voters of said Territory voting at the election held therefor as hereinbefore provided, but not otherwise, the legislature thereof may assemble at Santa Fe, organize and elect two Senators of the United States in the manner now prescribed by the laws of the United States; and the governor and secretary of state of the proposed State shall certify the election of the Senators and Representatives in the manner required by law, and when such State is admitted into the Union, as provided in this act, the Senators and Representatives shall be entitled to be admitted to seats in Congress and to all rights and privileges of Senators and Representatives of other States in the Congress of the United States; and the officers of the State government formed in pursuance of said constitution, as provided by the constitutional convention, shall proceed to exercise all the functions of State officers; and all laws of said Territory in force at the time of its admission into the Union shall be in force in said State until changed by the legislature of said State, except as modified or changed by this act or by the constitution of the State; and the laws of the United States shall have the same force and effect within the said State as elsewhere within the United States.

SEC. 37. That the sum of $100,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, for defraying all and every kind and character of expense incident to the elections and conventions provided for in this act; that is, the payment of the expenses of registration and holding the election for members of the constitutional convention and the election for the ratification of the constitution at the same rates that are paid for similar services under the Territorial laws, respectively, and for the payment of the mileage for and salaries of members of the constitutional convention at the same rates that are paid the said Territorial legislatures under national law, and for the payment of all proper and necessary expenses, officers, clerks, and messengers thereof, and printing and other expenses incident thereto: *Provided*, That any expense incurred in excess of said sum of $100,000 shall be paid by said State. The said money shall be expended under the direction of the Secretary of the Interior, and shall be forwarded, to be locally expended in the present Territory of New Mexico, through the secretary of said Territory, as may be necessary and proper, in the discretion of the Secretary of the Interior, in order to carry out the full intent and meaning of this act.

Amend the title so as to read: "An act to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States."

Mr. BARD. Mr. President, I desire to explain the purpose of this amendment. It eliminates from the House bill, after section 19 to the end of the bill, all reference to the Territory of Arizona, and provides for the admission of New Mexico as a State.

Each one of the previous articles follows precisely the terms and language of the House bill as amended by the Senate, with one exception, and that is in section 32 of the bill now before the Senate, where it was provided that the proposed new State of Arizona, including the Territory of New Mexico, should be granted $5,000,000 for school purposes. This amendment provides that one-half that amount shall be appropriated for public schools in the State of New Mexico. The amendment is like the bill itself in all respects referring to New Mexico, and it follows also the provisions of the amendments proposed by the Senator from Colorado [Mr. PATTERSON], the Senator from North Dakota [Mr. MCCUMBER], and the Senator from Ohio [Mr. FORAKER].

Mr. HOPKINS. Mr. President, I am opposed to the amendment offered by the Senator from California, and I trust that upon a vote that amendment will be defeated. It is unnecessary for me to say at this stage of the discussion that the Senate has embarked upon the most important legislation that it has been called upon to consider during the present session of Congress. The making of a new State is a matter of grave importance—much more so than legislation relating to tariff or finance. We know that time and trade conditions affect the tariff conditions of the country, so that there must be a revision of that kind of legislation, and the success of one or the other of the great political parties which controls the destinies of this Republic may control the financial policy of the Government, or change it, as is determined by the success of the one or the other of the parties.

It is not so, however, when we admit a Territory as a new State into the Union. That legislation can not be reenacted; it can not be taken back. The admission of a new State into the Union affects all of the other forty-five States that form this great Republic. It requires a readjustment of the rights of all the States and of all the people who live within the limits of the several States.

When these Territories are admitted they are not admitted in degree. There is no State in the Union that is admitted in any degree. If it is admitted at all it has the same rights and privileges in this Chamber and in the other branch of Congress that any one of the old original thirteen States has. It has the same influence in this body upon legislation that the great State of New York, Pennsylvania, or Illinois has.

Hence, I say it is important that we should look carefully upon these questions to know that after the action is taken the result will not only be beneficial to the people living within the limits of the Territory that is admitted as a new State, but that the influence will be beneficial to the other forty-five States that are already in the Union.

The Senator from North Dakota [Mr. MCCUMBER] during the progress of the debate here to-day has called attention to the fact that some of the New England States and Delaware are small States, and he has used that as an argument why we should admit Arizona and New Mexico, with the sparse population in those Territories, as sovereign States in the Republic.

Mr. President, does not every student of American history know that there is no relation between any of the New England States, who were a part of the original compact, and the admission of a new State into the Republic? Take the States of Delaware, Rhode Island, New Hampshire, and Massachusetts. We would have had no Federal Republic had not they united under the form of government we have to-day. We could have admitted no new States from the territory we possess had not the thirteen original States united into a Federal Republic. History, however, bears me out in the statement that from the earliest time we have exacted larger territory and a larger population for the new States than was had in a number of the original States.

Senators have spoken of Vermont. As has been well said by the senior Senator from that State, Vermont was an independent Commonwealth during the progress of the Revolutionary war. She sent her soldiers to the front and helped fight the battles of our country, as did the other thirteen colonies, and when she came knocking at the door to be admitted as an independent State in the Republic she was admitted, and properly admitted, because she possessed all of the requisites the original thirteen States possessed.

That, Mr. President, is not the condition to-day. The amendment submitted by the Senator from California proposes to admit New Mexico as a separate and independent State in this Republic. I protest, in the name of the people whom I in part represent upon this floor, against such action on the part of the Senate as that. I claim that the people are not prepared for statehood.

I have stated, Mr. President, that when we admitted new States we had larger territory than the original thirteen States posessed. Take the States that were embraced in the Ordinance of 1787. In the discussion that was had by the fathers of the Republic it was proposed by some that that magnificent territory should be divided into ten States, giving twenty Senators in this body. But it was opposed, and very properly opposed, and when the ordinance was adopted it was provided that that Territory should be divided into not less than three nor more than five States. One of those States is the great State of Illinois, and instead of having a few thousand square miles it is an imperial State that embraces within its limits 56,000 square miles. It has more than 32,000,000 acres of the best land there is in this entire country.

Now, how is it with the proposed State of New Mexico as advocated by the amendment of the Senator from California? I have figures before me which show that to-day there are only 254,945 acres under irrigation, or susceptible of grazing or agricultural purposes. Think of it for a moment! A Territory that has had a separate and independent existence for fifty years, and yet within its limits they can show only 254,945 acres that can be cultivated by man.

Compare that with Illinois, with her 30,000,000 acres and more. Compare it with the State of Kansas, with her 41,000,000 acres. Compare the population of New Mexico of less than 200,000 with the 5,000,000 people in Illinois, with the 6,000,000 people in Pennsylvania, with the between 7,000,000 and 8,000,000 people in New York, and then do you say to me, Mr. President, that those people representing that sparsely populated country are entitled to the same representation upon this floor as the imperial States I have named?

It may be said that in the course of time New Mexico may develop in population and in her acreage. This question has been thoroughly investigated by scientific men whose judgment we can take, and they say that under the most favorable conditions, with the United States pouring out millions of money in the interest of irrigation in this country, they can not add to exceed 300,000 acres to the 254,000. So under the most favorable conditions never in the history of that Territory can we get to exceed 554,945 acres of arable land. Think of it for a moment! And again, when you consider the limited area of the Territory, look also at its population. I just said that it to-day has a population of less than 200,000. The Senator from Montana [Mr. CLARK] in his very able and interesting speech made upon this floor the other day in his wildest imagining never put the population of that Territory in the far future to exceed three-quarters of a million of people. In my judgment, under the most favorable conditions fifty years from now will not see 500,000 people within the limits of that Territory.

Now, Mr. President, under those conditions I insist that New Mexico shall not be permitted to exercise the same political rights upon this floor that are exercised by the forty-five States now in the Union.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. NEWLANDS. Mr. President, it is a sufficient answer to the Senator from Illinois [Mr. HOPKINS], whose State was admitted into the Union with a population of only 34,000, that the Territory of New Mexico seeks admission to-day with a population of 300,000, nearly ten times the population of Illinois at the time of its admission to the Union.

If the connection of a Territory possessing 300,000 people with the Union of the States as a sovereign State is to be regarded as a desecration, I ask whether the existence of Vermont in the Union of the States to-day, with only 350,000 people, is a desecration; whether the existence of New Hampshire with an equal population is a desecration; whether the existence of Rhode Island with a population, I believe, less than that of New Mexico to-day, is a desecration, and whether the existence of Delaware as one of the sovereign States of the Union side by side with Illinois is a desecration? I ask the Senator whether the history of any one of these States dishonors the American Union, and whether we are willing to blot out from the history of the Republic the splendid record made by the men of those States in the administration of the affairs of the Union and in the legislation of this very body of which we are members.

Mr. President, the Senator doubtless insists that the population of New Mexico will remain stationary. He declares that there are only 250,000 acres of land under cultivation, or rather,

as he states it, that can be cultivated. Mr. President, it is true that when the last census was taken there were only 250,000 acres of land under actual irrigation, but will the Senator contend for a moment that there are only 250,000 acres of land in that State capable of irrigation?

We have before us the report of the Director of the Geological Survey, who makes a mathematical demonstration that, taking into consideration the water supply of that Territory, the various streams and the adjacent valleys, the agricultural development of New Mexico alone will support 500,000 people.

That is to be the development of the future, the development that is now commenced under the great national reclamation act, which we have recently enacted. If the agricultural possibilities of that State will support 500,000 people, I ask how many of the correlated industries of commerce and of manufacture and of mining will it support? If, with a cultivated area of only 250,000 acres, New Mexico has been able to attain a population of 300,000, I ask what population she will attain when these vast areas are put under cultivation through the beneficent process of irrigation, and when all the related industries of mining and of commerce are built up in connection with the agricultural development?

But, Mr. President, the Director of the Geological Survey has underestimated the agricultural possibilities of that State. He probably makes a mathematical calculation as to the duty of the water now running in the streams, regardless of the fact that as land hitherto arid is put under cultivation the soil will be saturated with water, and that if you put 100,000 acres of arid land under water to-day, though the operation of irrigation may require a large amount of water in the immediate future, yet that water spreading over the soil seeps through it and brings the water level that was from 50 to 100 feet below up to within 2 or 3 feet of the surface, and thereafter a very small amount of water will be needed in that valley to bring crops to perfection. So the very water that is absolutely essential to the reclamation of 100,000 acres of land to-day can three years hence be made to reclaim another 100,000 acres and three years after that to reclaim another 100,000. Therefore it is almost impossible to limit the amount of reclamation that can be accomplished with water which appears in the first place almost inadequate to supply the limited area to which it is applied.

Mr. President, irrigation is in its infancy. In many irrigated districts now they find that they are suffering from a surplus of water, instead of a deficiency of water, and they are compelled to build drainage ditches to carry away the water, instead of canals to carry the water upon the land. This development will be a constantly continuing and progressing development. The imagination of man can not limit its extent.

Now, what about the fertility of the soil? Will the Senator from Illinois contend for a moment that, acre for acre, the soil of Illinois is as productive as that of New Mexico? Does he not know that the soil in New Mexico is almost of limitless depth; that it has not been washed away by torrents of rain, but remains there in all its virgin perfection? Does he not know that the water carried from mountain streams over those lands contains in itself elements of fertility; that it is not the kind of water that falls from the clouds absolutely pure, but water that carries with it mineral and vegetable deposits which in themselves constitute a part of the fertilizing processes of the land, so that the land in the irrigated region never requires the artificial fertilization which is required for other lands?

Does he not know that the sky is cloudless, that the sun beats down with almost unrelenting warmth? Does he not know that when you have a rich soil, abundance of water, and warmth of sun you have all the elements of the most scientific cultivation—not the accidental cultivation of the humid region with its clouded skies, its torrential rains, its floods, and its droughts, but a scientific adjustment of all the relations of agriculture—adjustments of the amount of water required by the soil and a steady continuance of the heat and warmth necessary to generate production? Does he not know that this region is capable of an intensive cultivation, that it raises the most valuable products of the soil, including the tropical and semitropical fruits?

We also know something about the mineral richness of that country. We know that it is rich not only in gold and silver, not only in the discoveries already published to the world, but in wealth yet undiscovered and in resources still undeveloped.

New Mexico has vast areas of land containing asphalt and coal, the basis of great industrial development. And can it be maintained that a country yet in its infancy, a country which since the last census has pretty nearly doubled in population, will remain stationary; that it will remain stationary in population as Vermont has for forty years; that it will remain stationary in population as New Hampshire has for forty years; that it will be the case of arrested development that Delaware is to-day, with its population of 184,000?

If the history of Delaware, of New Hampshire, and of Vermont is only that of added luster to the Union, I ask what can we expect of this proposed State which has already reached their proportions in population and is simply upon the threshold of the wealth of the future?

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. HEYBURN. Mr. President, a comparative statement of figures sometimes does not convey the fullest or the best understanding of a question. I desire to demonstrate these figures upon the map which has been referred to. I have made a cardboard which exactly conforms to the size of the proposed State of Arizona on the map. The junior Senator from Illinois [Mr. HOPKINS] insists upon the admission of this Territory comprised of Arizona and New Mexico as one State. It is represented by this cardboard exactly [indicating]. I desire to place the cardboard representing that State on the Northwest Territory, out of which five great States of the Union were made. That cardboard represents nearly 20,000 more square miles than the Northwest Territory, out of which Ohio, Indiana, Illinois, Wisconsin, and Michigan were carved. At the time that they were created States they contained less population than New Mexico contains to-day, according to the census of the United States. The fertility of their soil and their resources were as unknown at the time when those States were erected as are the resources and the fertility of the soil of Arizona and New Mexico to-day. They contained a larger Indian population in proportion to the white population; they contained a larger illiterate population in proportion to the intelligent population than Arizona and New Mexico to-day. I again place this piece of cardboard on the map over the territory that at that time was known as the "Southwestern Territory." It comprises more acres of land, more square miles, than that Southwest Territory that was created into this great belt of Gulf States; and at the time of the creation of those States less was known of their resources, and they had not been demonstrated as have the resources of New Mexico and Arizona to-day.

When we are making States, we are making infant States always. We are making them upon the faith that they will grow and become of more importance. It is not supposed that these Territories are to remain out of the Union until they have attained the proportions of the great empire States, as we term them.

Those people are our people. They are your younger sons that went from your homes because the home nest had grown too small. They are the ambitious members of your families, who went down there carrying with them the pledge that if they would go out upon the picket post of civilization and fit it for statehood you would give it to them. Have you lost faith in your pioneers who went out there? They were not the sloths or the drones of civilization. They are the best blood of the United States, even though they have in their midst the Aztec, the Mexican, or the Indian. When they went there they carried with them that pledge that had gone always to the frontier, that "if you will go into these new lands and reclaim them and produce conditions that fit them to be States, we will give you statehood."

We are here called upon to-day to redeem that pledge. We are not asked to take them upon faith alone into the family of States. We are not asked, as they were when they made five States out of the Northwest Territory, to rest upon the assurance that those people would eliminate the Indians and the savagery.

The Senator from Indiana [Mr. BEVERIDGE] the other day said that those States contained and carried in their fertile lands a pledge that these States do not carry.

Mr. President, the natural fertility of the soil of Arizona and New Mexico is greater than the natural fertility of the soil of the Lake States. It needs only that water shall be applied to those lands to double the product per acre of any State along the Lakes or elsewhere in the eastern part of this country. That has been demonstrated, so that it is no longer a question which can be doubted.

Mr. President, the proposition to admit New Mexico as a State, as provided by this amendment, will settle this question. New Mexico itself is larger than nearly any other State that has been admitted to the Union. We leave Texas out of consideration, because Texas came to us by treaty, and so it is not at all within the rule under consideration. But New Mexico has the natural resources, has the population, has the enterprise

that entitles it to statehood, and I think this amendment should be adopted.

Mr. SPOONER. Mr. President, I sincerely hope the pending amendment will not be adopted. Oklahoma and the Indian Territory under this bill are to come in as one State. In natural resources they supplement each other, and from every conceivable standpoint Oklahoma and the Indian Territory are entitled to come into the Union as a State. If there is any possible theory from the standpoint of to-day why the Congress shall admit into the Union New Mexico as a State, I have not heard it.

It is idle to compare the population of New Mexico with the population of Delaware, with the population of the original States. They did not come into the Union. They made it. They achieved the independence of the United States from Great Britain; they planted our civilization upon this continent, and, Mr. President, they laid the foundation of this Union of 80,000,000 people. It is not to be said in derogation of those States that in some of them population has not increased. It is enough to say of them that they were the original constituent elements of the Union.

It is idle also to say that the ratio of population, upon which should be based the test of statehood, is the same to-day, or should be, that it was fifty years ago. Statehood is not to be determined simply with reference to area.

It is idle, Mr. President, to compare the Northwest Territory in acreage with Arizona and New Mexico. The conditions are utterly different. No chances were taken about the States which were carved out of the Northwest Territory. They lacked only, in order to constitute perfect States, population, and it was the theory, and it became a fact, that they would be populated by people who came from the original States, as in the first instance they were. They had climate; they had rainfall; they had area, and they had the variety of resources.

It required nothing of prophecy, such as has been indulged in by the Senator from Nevada [Mr. NEWLANDS], as to what their future would be so far as capacity for producing wealth, for development, and for settlement were concerned.

When the amendment proposed by the Senator from Ohio was adopted, leaving it to the people of Arizona and to the people of New Mexico to determine whether they should come into the Union as one State, I supposed it ended, as I think it ought to have ended, this branch of the controversy.

New Mexico may have area sufficient, but that is not enough to make a State; it was not in the olden days, nor is it in these times. To constitute the right to statehood a Territory must have reasonable certainty of growth and development, not from what some gentlemen prophesy may happen in the long reach of time, but based upon what has happened and what is known. I say of the Territory of New Mexico, not intending to deal unfairly in judgment with her people, that she is not fit to come into this Union as a State. She is not fit in point of development. Her mineral resources, so far as they are developed, are a bagatelle in their relation to this question. Her acreage that is thus far demonstrated to be susceptible of tillage is a trifle.

Are we to admit States into the Union upon the prophecy of the Director of the Geological Survey as to what may in the long future develop in the way of cultivable area? Are we to admit States into the Union upon what the Senator from Nevada or any other Senator thinks is the hidden mineral wealth of that region? No man knows what lies hidden in the ground until, through the expenditure of his money, he goes after it. Is it not enough, Mr. President, to say, and is it not true to say, taking all of the data furnished by the distinguished Senator from Minnesota [Mr. NELSON] in his carefully prepared speech, that, from the standpoint of to-day, there have not developed the elements in New Mexico—I mean material elements—to entitle her to take her place in the Union as one of the States? Why not wait a better knowledge of her resources?

That is not all, although, in my judgment, that ought to be enough. The population of New Mexico—and population above all things else goes to make a State—is not a population either in numbers or quality which entitles New Mexico now to be admitted into the Union as a State. When I say "quality," I do not mean, as the Senator from Ohio [Mr. FORAKER] seemed to think was meant the other day—good men and bad men—not that; I do not reflect upon her people, but I say a people who have been organized as a Territory for fifty years, and never yet have become so far assimilated with our population as to be enabled to speak and understand the language of our country, so that the proceedings of the courts, the proceedings of the legislature, the proceedings of conventions need not to be carried on with interpreters, is not the sort of population which ought to be admitted into this Union of 80,000,000 people.

As was reported by the Senate committee in 1902, they have to use interpreters in their legislature in order to make their legislative proceedings understood by the men who make laws for the Territory. The subpœnas and processes of many of the courts are in the Spanish language. We have had to print the statutes for New Mexico on one page in the English tongue and on the other in the Spanish. The committee reported, and it is doubtless the truth, that the arguments of counsel have to be interpreted to the juries; also the charge of the court; and that at times an interpreter must enter the jury room to enable jurors to understand each other; that political speeches have to be interpreted to the audiences, and the proceedings of political conventions have to be interpreted to the delegates in order that they may know for what they are voting and for whom they are voting. Take the list of their council. It reads like the muster roll of a Spanish military company.

Mr. CULLOM. Read some of the names.

Mr. SPOONER. The Senator from Illinois asks me to read some of the names. I do not speak Spanish and, therefore, I must decline. There are able and educated men among the Mexicans of the Territory, but the mass is not so.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. SPOONER. I am sorry, Mr. President, for there is much to be said against this amendment.

Mr. BAILEY. Mr. President, the Senator from Wisconsin [Mr. SPOONER] seldom misunderstands an argument, but on this occasion he has entirely misunderstood the meaning of those Senators who have referred to some of the smaller New England States. He says that these comparisons are idle, because those States made the Union. I appeal to him, if small States could make the Union, may not small States preserve it? Instead of answering our argument, he confirms it. I beg to assure him that when I have alluded to the size of the New England States I have not done so in any spirit of criticism; but I have rather referred to them in justification of my claim that the best States are neither the greatest in population nor the widest in extent. I venture to say that to-day no single State in all this Union exerts a more powerful and, I will add, from a Republican point of view, a more salutary influence upon our legislation than the State of Maine; yet when the last apportionment, based upon the census of 1900, was made, Congress was appealed to to increase the membership of the House of Representatives in order to save the State of Maine from the loss of a Representative. I say that if Maine and Vermont and New Hampshire have honorably and fitly borne their part in the development of this Republic, it does not lie in the mouths of Senators from that region to say that their sons and their grandsons in the far West may not duplicate their virtues.

Mr. SPOONER. If the Senator will allow me, there are 60,000 Mexicans in New Mexico who are neither their sons nor our grandsons.

Mr. BAILEY. I thank the Senator for calling my attention to that, because if the Mexican population is so bad as he describes it, in God's name why will you force them upon the unwilling people of Arizona? If he will not associate with them, I ask what defense he will make to his conscience and his people for forcing them upon the protesting but helpless citizens of Arizona? That is a question the Senator must answer.

Ah, Mr. President, the question here is not so much what Arizona is—it is what will Arizona be? We are not legislating for this day, nor for this decade, nor even for this century; we are building, sir, for all time; and he is a shortsighted Senator who can not look down the long flight of the years to come and see this struggling and sparsely settled Territory grown into a prosperous and a populous State.

The same argument which is urged upon us here has been employed against the admission of many States whose thousands of industrious and happy people now are contributing to the wealth and the glory of this Republic. Neither the Senator from Wisconsin nor any other Senator on this floor can look into the future and tell what seeds will grow, and I affirm that we know more to-day of New Mexico and Arizona than our fathers knew of the great Northwest Territory when they carved it up into sovereign States.

I plead now for more. Where twenty massive columns rise, let us add these that in their strength they may add to the strength of others, until upon their lofty heads the splendid entablature of this Union shall rest secure forever.

Mr. ELKINS. Mr. President, I can not allow this opportunity to pass without saying a word in behalf of a people and a country to which I am sincerely attached, and I can not remain silent after the statement made by the Senator from Wisconsin [Mr. SPOONER], that a people whom I know well to be worthy, deserving, and law-abiding citizens, and among whom

I lived so many years, are unfit to be admitted to statehood and become a part of this Union. I feel I owe it to justice to defend the people of New Mexico when attacked as they have been in this debate. They are misunderstood and shamefully misrepresented.

All the rules that have heretofore governed the admission of States have been violated in this attempt to longer keep New Mexico out of the Union. Tried by any rule that heretofore has obtained in the history of the Government, New Mexico ought long ago to have been admitted into the Union as a State without Arizona or any other Territory attached or made a part of it.

The chief argument of the Senator from Wisconsin is that part of the people of New Mexico—and I say part, because he surely could not have meant all—did not speak the English language.

First I want to say to him that about half the people of New Mexico are Americans. This half speak the English language; they are cultivated and educated people who in every respect will compare most favorably with the people of Wisconsin or any other State in the Union. The fact that the other part or half of the people of New Mexico do not speak the English language should not be urged as a reason why they should be refused the rights of statehood.

There are thousands, I may say hundreds of thousands, of people in the United States—good citizens—who do not speak the English language, but it does not follow that these people should be denied the rights of citizenship or discriminated against in any way.

Let me tell the Senator that for fifty years the State of Louisiana, and I do not know but that it does to-day, published its laws in French and English, and in the early history of Louisiana French was spoken in the legislature and the laws were published in French, and to-day in Canada the daily proceedings of the Canadian parliament are published in French as well as in English.

Mr. PERKINS. That was true in California for twelve years.

Mr. ELKINS. And California for twelve years did the same thing. It is no impeachment of people that they do not speak the English language. These Mexican people came to us as a conquered people and not of their own volition. They became a part of this country not by choice, but by force of arms.

If they were good enough to be annexed to the United States and to be made citizens of the United States and to have their territory become a part of the territory of the United States, why draw the line against making them full-grown citizens of the Union by allowing them to become a State? Why keep them in servitude, in vassalage and pupilage for fifty years before admitting them into the Union? There is nothing in the argument. It does not appeal to the intelligence of fair-minded men. What a poor excuse for denying to a Territory with the requisite population its right to become a State.

Mr. President, so much for a part of the people not speaking the English language. These people, these Mexicans, so despised here in the Senate are a law-abiding and religious people, they have more churches than can be found in any other part of the country in proportion to population. They have good schools, good libraries, and good public institutions. I say to-day they are and have always been loyal to the Union and good law-abiding citizens. They knew enough to fight for the Union and to help save it, and they knew enough to send a splendid regiment to the Spanish war.

When the life of the Union was trembling in the balance and strong hearts were depressed, Mexican soldiers were welcomed into the Union armies, officered by native Mexicans. The great Lincoln did not ask, Congress did not ask, no Senator asked if they spoke the English language and declared they were unfit to serve as soldiers, and no Senator should now proscribe and cast them out because they don't speak English.

Mr. President, the character of the Mexican people can not be successfully attacked. A committee running through the Territory of New Mexico, witnessing the country from a Pullman palace car window, lingering only a few days here and there, can not form any adequate idea of a great Territory, its people, and institutions, and they can not instruct me about the resources of New Mexico or misrepresent the character of her people without a protest from me.

Mr. HOPKINS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from West Virginia yield to the Senator from Illinois?

Mr. ELKINS. I have only ten minutes. Your State had only 55,000 people when admitted and New Mexico has five times as many.

Mr. President, I want to call the attention of Senators to the declarations of three Republican national conventions, held in 1888, 1892, and 1896, all to the effect that these Territories should be admitted into the Union. I believe, however, they have been read in this debate, and I will not take up the time of the Senate to read them in detail. One Democratic national convention arraigned the Republican party for not admitting these States into the Union according to pledges and promises. The Democratic party also declared in favor of the admission of the Territories as States.

And, Mr. President, let me say of the great Democratic party—or the small Democratic party since the recent election—that I believe its members here are making an earnest and honest effort and struggle to do right and keep the pledges made in their national platform, and I am sorry to say the Republican party in Congress is trying to violate its solemn pledges made in three national conventions.

The Senator from Illinois says he can not vote for this amendment. Then he is voting directly against the pledges and declarations of the three national Republican conventions. Now, which is to be trusted, or should be, the conscience and judgment of the Senator from Illinois or the Republican party, speaking in three national conventions? Why not stand and vote with your party? A national convention speaks louder than individual opinions of Senators, and it ought to be more binding.

Mr. HOPKINS. Let me interrupt you now.

Mr. ELKINS. No; I can not. Mr. President, I have not the time to read the declarations of these conventions, but I wish to read from a distinguished Senator who I hope will vote with us on this question, and who was chairman of the Committee on Territories long ago, and who said this:

> The Territorial system was adopted only as a matter of necessity, in order that there might be some government in an undeveloped and sparsely settled region. And whenever settlement and development make it possible for a people to sustain a State government, according to the principles of the Federal Constitution, the Territorial government should be abandoned and the privileges of State citizenship conferred upon its people.

That was said by the Senator from Connecticut [Mr. PLATT] when he was on the Committee on Territories. No abler, no better Senator ever occupied a seat in the Senate, and I am pleased to follow him when he speaks as chairman of the Committee on Territories; but I can not in the Senate, when he tries to deny the rule he laid down as chairman of the Committee on Territories.

Mr. President, there is one other authority which I quote. When Benjamin Harrison was on the same committee he confirmed this rule of the Senator from Connecticut, and said:

> Territorial governments were always regarded as fomative and temporary, to be superseded by State governments as soon as the necessary conditions existed.

But, fellow-Senators, beyond all this stands the treaty of Guadalupe-Hidalgo, the ninth article of which pledged the faith of the United States, when this country was taken over by solemn treaty, that these people should be admitted to the full rights of citizenship and become a part of the Union. That ninth article stands to-day violated, and has been shamefully violated for fifty years. If the Republic of Mexico were equal in strength and power to this Republic, I believe this article would not have been so long and so flagrantly violated. It does seem to me the solemn pledge should be kept to those people. Fifty years ago they thought they were going to become American citizens and entitled, as they were promised, to all the rights and privileges of American citizens. But, Mr. President, this has been constantly and persistently denied.

I see the Senator from Wisconsin in his seat. He complains because they can not speak the English language. Are all the people in the world who can not speak the English language to be condemned and denied the rights of citizenship and to live in vassalage perpetually? Mr. President, I am afraid there is more in this than appears on the surface. The fact is there is growing up in the States where the Republic is now controlled a jealousy of new States. This question ought to be tried on its merit and settled on its merit and not on the prejudice against incoming States which might vote this way or that way or the other way. Above all it should be settled on the eternal principles of justice and not on how these States will or may vote politically. We have had expressions from the Republican party to this great convention. We have them right along.

I know the Senator from Wisconsin wants to ask me why the party did not make some expression in the last convention; and I will tell him, and I will tell the Senator from Illinois. It was because the Republican party lost confidence in the Senate and could not trust it any more to give it any directions on this subject. Here we stand before the world not only violating our own pledges recently made as Republicans, pledges unanimously

made, but standing here as violating the pledges of a sacred treaty entered into when these people became citizens of the United States or supposed they were to become citizens of the United States.

Now, Mr. President, one word about the resources of New Mexico and its limited agricultural area. New Mexico exceeds in wool producing any State in the Union. It has rich deposits of oil, coal, and iron. It has gold and silver mines. Its soil is unsurpassed in richness—it never needs fertilizing, and when irrigation becomes successful and general, as it will be, New Mexico will be a great and rich State.

I stated without hesitation, in my opinion, in point of agriculture it is destined to rival the greatest States of the Union. As soon as the water can be impounded and saved, as it will be in the near future, millions and millions of acres of the most fertile lands in the world will be brought under cultivation. The arid lands of the West are destined to become the great wheat fields of this country. Senators who have not visited New Mexico, and are unacquainted with its resources, can form no idea of its great agricultural and other wealth.

The PRESIDENT pro tempore. The time of the Senator from West Virginia has expired.

Mr. MORGAN. Mr. President, in acting upon the question of statehood for New Mexico we ought to have some respect for our own legislative history. I am informed by the Delegate from New Mexico, who is a very accurate gentleman and who has penetrated this subject to the bottom, that beginning with 1850 the respective Houses of Congress have at different sessions of Congress voted for bills to admit New Mexico into the Union seventeen times. I thought the question was settled as to the qualification of New Mexico in respect of population and area and the character of her population and the language that her people spoke, by many, many votes of the respective Houses of Congress. Seventeen bills have passed at different sessions since 1850 to admit New Mexico as a State in the Union, and yet here to-day we are making question with regard to her right to admission upon the ground of her Territorial area and her population. That does look as if the Senate of the United States were trifling with this subject.

The record thus solemnly made by the two Houses at different sessions since 1850, when this matter has been the subject of close, earnest debate, ought to have an impression upon this body. We can not justify ourselves in going before the world and refusing to admit New Mexico into this Union as a State upon any ground that has been stated here to-day. The ground has been thrashed over now for more than half a century. The Congress of the United States has been endeavoring to comply with its contract contained in the treaty of Guadalupe Hidalgo, but one reason and another, most usually political reasons, have prevented the two Houses from concurring at the same session upon the same bill. Therefore New Mexico has been kept out of the Union. I do not wonder that her people are suspicious of the good faith of the people of the United States.

It will not do for us to say that a State can not be admitted into the Union because her people do not speak the English language. It has been stated here by the Senator from West Virginia [Mr. ELKINS] that that matter has not heretofore been considered a question of any importance at all in the admission of States into the Union. Take Oklahoma. There are five civilized tribes, each of them speaking a different language, each one having a written language, and in the Cherokee country they have that wonderful alphabet of the great Indian Sequoia, whom I happened to know when I was a child. Their laws have been published both in the Sequoia alphabet and in English. They have published their constitution, and I have often said, when reading the constitution of the Cherokee Nation, for instance, that I would be perfectly willing to adopt it as a constitution for the State of Alabama. It is a most admirable document.

Some of the Five Tribes speak the English language; not all; perhaps not half; and those who speak it speak it imperfectly, with a brogue; but we do not think of excluding them from statehood or Territorial government or from the benefits of any of our laws because of their difference in language. The application of this argument to New Mexico to-day, after more than fifty years during which it has been considered here in Congress, seems to me is not sincere.

Mr. DOLLIVER. Mr. President, I have listened for many years to discussions about the admission of these southwestern Territories, and I wish to confess, before I go any further, that I have for most of that time had definite convictions only in respect to the Territory of Oklahoma. I reckon that arose out of the fact that I knew more about that community than about the other Territories embraced in this controversy. Most of those people went there from the States of Iowa and Kansas, and I knew them to be good people and fit for any gift this Government might bestow upon them.

I will confess also that I have more concern for them now than I have for any of the other people interested in this discussion. They have built there one of the model American Commonwealths. Such a thing never happened before in our world; of a population 500,000 strong, taking their churches, their schoolhouses, and their printing presses with them, and within a few months setting up all the machinery of government and civilization, as our people did who settled the Territory of Oklahoma.

I have seen a good many times since the question of these Territories came up when I wished that we might have that sense of justice and that practical good sense to separate that community of nearly a million trained American citizens from the other populations involved in this bill, and give them, on their merits and of right, their title of admission into the American Union. But an observation running over a period now of many years has convinced me that if the people of Oklahoma ever come into the Union they must come hand in hand with other communities, whether they are entirely satisfied with them or not.

I would not for anything say a word of disparagement about the Indian Territory. I am especially forbidden to do it by the lack of definite knowledge and information that could only come from actual association with and living among those people; and therefore I have concluded, not without regret, not without misgivings, to put aside whatever prejudices I may have against the combination of the Territory of Oklahoma with the remnants of the Indian tribes who have been domesticated for more than half a century in the Indian Territory.

I have had a good deal more trouble to give up my prejudices against the admission of the Territories farther south, and I would not give them up if I felt certain that my prejudices were founded upon fact. I know they have only a few people, but I do not know what the future of these Territories may bring forth. I do know that we have hardly ever had a statesman in the United States who had sense enough to see what was going to happen to the American frontier, and I recall reading speeches made by a man no less farsighted than Daniel Webster predicting that the whole Northwest Pacific region would remain forever an uninhabited and worthless wilderness.

The State in which I myself live had the west half of it once dismissed by a geologist as an uninhabitable desert, fit only for sand snipes and prairie wolves. So I have come to receive with a good deal of timidity predictions about the future of great areas of the West.

I know one thing for an absolute certainty, that you can not have a great population or a great civilization where it does not rain. I have seen enough of this country to know that mud and civilization go together; at least they have in all previous ages of the world. It may be that we have come to a time when we will have to reverse that rule, and it may be that the Secretary of Agriculture is more nearly correct—and I rely upon him a good deal more than I do upon the Director of the Geological Survey—when he said, as he did one day last summer in western Kansas, that "the good Lord above us never made an acre of land in America that can not be used, if we only have the wisdom to find out how to use it."

I have an opinion—I hope it may be true—that most of us will live to see the brain and genius of man, in combination with the infinite resources of the Government of the United States, redeem from the desert even such backward and unpromising Territories as New Mexico and Arizona.

So I have managed with a good deal of difficulty to get rid of my prejudices on that account. But I have not been able to get rid of the idea that if we are going to admit those communities we ought to say to them in kindness, "Get together, if you can, and come as one State into the Union. There are doubts and anxieties and uncertainties about your future. Pool your issues, if you are able to do it. Dismiss your neighborhood differences. Unite together, and we will admit you to the Union, if on no other theory, on the theory of the unjust judge in the Gospel, who was worn out by a petitioner's oft coming forward with her claims."

And so I have made up my mind that the committee, which has given immense labor and research to this question, has hit upon the only practicable solution with respect to the remaining Territories that we are likely to have in this generation; and dismissing all doubts and fears for the future, and with absolute confidence in the American frontier, whatever language it speaks or whatever may have been the conditions of its previous civilization, I think the best thing we can do is to end this controversy by supporting the bill brought in by the Committee on Territories.

Mr. FORAKER. Mr. President, I wish to call attention to some figures in answer to what has been said in opposition to this amendment. I think they will answer conclusively every suggestion that has been made. Certainly they will if we are to pay any attention in taking present action to the precedents we have heretofore established.

There are in the Territory of New Mexico 300,000 people. I think I would be justified in saying 350,000 people, but certainly it is conservative to say 300,000 people. This people have produced wealth there to the amount of more than $350,000,000. They have 3,000 miles of railroads constructed and in operation. They have more than $10,000,000 invested as capital in banking institutions of the Territory. They have 75 newspapers. They have over 800 schools, in which their children are being educated. They own more than $2,000,000 of school property. They have State universities, colleges, great normal institutions, and, as I have already indicated, one of the best school systems that can be found in any community in all this country.

They are making rapid progress. Their progress for a time was indeed slow. But the reason for that has already been pointed out. Not until within the last twenty-four months have the titles to their lands been settled through the action of the Court of Private Land Claims which the Government established there some ten years ago. Now men are taking homesteads, building up farms, and engaging in other industries. Almost every vocation is well represented. They have not only agriculture and mining, but they have cattle raising, and nearly all of their territory is being employed in some useful way.

Now, as to the character of their people. It has been said that half of them speak only the Spanish language. That I think is an overstatement. About half of them, perhaps a little more than a majority, are Spanish-Americans, but the great body of Spanish-Americans understand the English language, and most of them who participate in public affairs speak the English language as well as the Spanish language.

The Senator from Wisconsin declined to read the list of names that had been sent him of members of the legislature in New Mexico, on the ground that he can not read the Spanish language. I have the same list here. Let me read it to the Senator and to the Senate, and see whether or not there is any difficulty either in pronouncing the names, as the Senator indicated there was, or in understanding that they have splendid capacity to legislate for their community and to legislate satisfactorily for the State if we give them statehood.

Col. J. F. Chaves, an American, a man who was a colonel in the civil war; Thomas Hughes, a scholar of fine attainments, the publisher and editor of the Daily Citizen, of Albuquerque, N. Mex.; George F. Albright, a scholar of high attainments, publisher and editor of the Daily Journal Democrat; W. H. Andrews, a miner and railroad builder, formerly of Pennsylvania; C. A. Spiess, a lawyer of considerable attainments, present district attorney for the fifth district of New Mexico; James S. Duncan, railroad and irrigation contractor and builder; Albert B. Fall, late associate justice of the supreme court of New Mexico, a lawyer of high attainments; W. A. Hawkins, a lawyer of exceptionally high standing; M. Martinez, ranchman and stock raiser, a good scholar and linguist; has had large experience as a legislator; a native of New Mexico; V. Jaramillo, ranchman and stock raiser, a young man of education and of high social attainments, a graduate of Notre Dame College, Indiana, a native of New Mexico; Amador Chavez, a native of New Mexico, ranchman and stock raiser, late Territorial superintendent of education, late mayor of the city of Santa Fe, and so on. I have read enough to give you a fair example of the composition of the legislature of New Mexico.

These are the men who are chosen to those responsible positions by the electors of New Mexico at their elections. Is it any wonder when we see the character of these men that it should be true, as has been stated in this debate, that after fifty years of legislation we can look back over the records and find not one single statute enacted in that Territory which the Congress of the United States, although having the power to do so, has ever seen fit to abrogate or modify in any particular whatever?

Now, as to interpreters; for I must hurry along. The same statement from which I have been reading shows that in only six counties in New Mexico has it been necessary for some years past to use interpreters in courts. It is necessary to use an interpreter in the courts in Cincinnati, where I live. It is necessary to use an interpreter in the courts of Chicago, and it is necessary to use an interpreter to a greater or less extent in every other great city in this country where men of foreign birth come to testify or to appear as litigants. In New Mexico it is perhaps true in a greater degree, but the use of interpreters there is rapidly diminishing. For ten years last past they have scarcely used an interpreter at all in their legislature.

Now, as to the number of people. New Mexico has more than 300,000. Never since the beginning of our Government have 300,000 American citizens appealed in vain to the Congress of the United States for statehood save and except only in the case of New Mexico. It is a small electorate comparatively, but the National Legislature has never suffered because of the presence in it of representatives of small electorates.

Rhode Island, Delaware, Vermont, and New Hampshire, all small States in area and in population, have been referred to; but I need not stop to remind this body that they have ever been represented here and in the other House by men of high character and fine ability, men of probity, men of patriotism, men who have served their country well. And from the smallest of the States in the West have come men as to whom, no matter how much difference we might have in regard to public questions, there has never been any room to question their character or their ability or their worthiness to sit in this or any other legislative body in the country.

So it is, I apprehend, that if we are to follow precedent, as we should, we will admit New Mexico to separate statehood, as this amendment proposes, and I expect to see as a result of it a Commonwealth that will meet the just expectations of all who have the best interest of their country at heart.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. TELLER. Mr. President, I do not desire to prolong this debate, but the remarks of the senior Senator from Wisconsin [Mr. SPOONER] were such that in justice at least to a good many citizens in my own State I feel called upon to make some brief reply.

The Senator from Wisconsin does not know the people he has been talking about. He has not had the opportunity of knowing them as I and as the Senator from West Virginia who a few moments since addressed the Senate have had the opportunity. When I went to Colorado practically forty-four years ago there was a large population in the southern part of the State, or Territory, as it was then. It was an unorganized Territory of people who could not speak English, and for some years after we were in a Territorial organization we had an interpreter in the legislature. Years and years ago we dispensed with that interpreter.

Those people coming in contact with English-speaking people, which they had not been doing much previous to that time, acquired the English language; and while we have in every session of the legislature of Colorado more or less Spanish-speaking people, we do not need an interpreter.

Mr. President, the picture the Senator draws of these people is not a correct one. It is not pleasant to hear in this body those criticisms of our fellow-citizens, especially when we know they are not correct. I have said on this floor many times what I thought of the Spanish population of New Mexico, of Colorado, and of Arizona. In general intelligence they will compare with most of the rural districts of the United States. They have not, perhaps, the aggressive character of the Anglo-Saxon, possibly not the aggressive character of the New England Anglo-Saxon who gets out in our western country, who is a first-class citizen of the great territory you call "the West." But, Mr. President, they are a law-abiding people, a law-observing people, a law-respecting people. They are a church-going people; and if they do not belong to the religious faith I do, yet I want to say that for actual piety I believe they compare favorably with any other Christian denomination in any section of the country. They are truthful and honest. They have schools and they are ambitious to educate their children.

Nearly every great college in the East has its representative from either Arizona or New Mexico or both every year. From the State from which I come every great college in the East has had from half a dozen to thirty representatives, and New Mexico in the same line sends her sons and daughters to the East to be educated.

Mr. President, I am not going into any general discussion of this question. I know something about these people. I know something also about the character of the land. When anyone tells me here that the more than 100,000 square miles of New Mexico can never contain an agricultural population to exceed 500,000, or 750,000, I simply want to say he is ignorant of the capacity of that great Commonwealth that is to be. There is not a twentieth part of what can be cultivated yet in cultivation. Senators ask, Why have they not had more population? They have not had more population there because the people of the United States will never go to a Territory to make their homes unless in exceptional cases. We know how that was in Colorado. It was only after we had a State government that

the home seeker came to us. The miners, the speculators, and the adventurers went there, but it was when we had an established State government that the home seeker came.

New Mexico in ten years, from 1890 to 1900, more than doubled her population, and so did Arizona. Show me any other community that has done better than that. It has been done, too, with all the complaint that is made against going to a Territory. Yet thousands and tens of thousands of American home seekers have gone to that section of the country.

Mr. President, if every man in New Mexico were a Mexican, and if every man in it needed an interpreter, as the Government of the United States entered into a treaty with Mexico that she would give to those people an opportunity to come into the Union and become citizens of the United States, I would be in favor of her admission, as I have been at various times since 1876 on the floor of the Senate.

I know Senators here say that you can not raise this product and that product there. I remember very well when the civilization of this country stopped 50 miles west of the Missouri River. I can remember very well passing over the 650 miles between the Missouri River and the city of Denver without a solitary house after you had passed 50 miles out save that of the stagehouse. We were told then that central Kansas could not maintain a population; we were told then that western Kansas could not maintain a population; and we were told, above all things, that the State of Colorado could never maintain an agricultural population.

Mr. President, there is a region 75 miles long by 50 miles wide lying north of the city of Denver, and I venture to say there is not a more prosperous agricultural community in the whole United States. The land that we got for nothing, practically, is selling there—not to speculators, but to men who want to make homes on those lands—at from one hundred to two hundred dollars an acre, and the man who buys them at that price will make more money off his investment than he will if he buys in the State of Illinois at the same price—and I myself know something about Illinois, having lived in the best part of it for several years.

Now, Mr. President, when any Senator comes here and says that land will not produce and that there can be only so many people there he simply does not know what are the facts and he does not know what will be done. I know you can not prophesy very much about these things, and yet we who have seen this barren land made into a garden, and not in small areas but in great areas, know what can be done.

The PRESIDING OFFICER (Mr. GALLINGER in the chair). The Senator's time has expired.

Mr. STEWART. Mr. President, the expression of the junior Senator from Iowa [Mr. DOLLIVER] that civilization and mud go together, and that there is a necessary connection between them, may have been poetic, but it was not true. All of the great civilizations of ancient times of which we have any record were in desert countries. Egypt was once the granary of the world. Millions of acres of land which were then cultivated there are now abandoned to the desert. Efforts are being made to reclaim it. At first for many centuries, as far as history shows, agriculture was pursued only where irrigation was required. The vast empires of western Asia and Africa and portions of Europe once contained the civilization of all the world of which we have any record, and we are now examining them for the relics they furnish of former civilizations. The population was dense there. The cultivation of land by means of rainfall is comparatively modern.

But there is another respect in which the poetical allusion of my friend from Iowa is not true. Two-fifths of the entire area of the United States, leaving out Alaska, is desert, if you mean by desert land that will not produce without irrigation. The great States of Colorado, Montana, Idaho, Wyoming, and particularly Utah were once regarded as desert. I passed through the country when, as my friend from Colorado has said, civilization was limited to 50 miles west of the Missouri. It was said that it could go no farther. It was the common remark that the lands farther west were worthless. All this has proved false.

Look at the modern example furnished by India. There are vast regions of India, most densely populated and producing immense crops of all sorts, where there were deserts and where there are no running streams. Those people get the water from wells. Millions and tens of millions live and prosper by getting water from wells.

The capacity of man to overcome the desert and utilize arid countries has not been exhausted. It will go on. This despised country of New Mexico may not in the very distant future have a population of a million, it may be two million. The soil is there, the genial climate is there, and the water will be brought there from various sources; it can be obtained from the streams and stored.

Arizona is destined to be one of the leading States of this Union. There is more land that can be watered there than in almost any of the Western States. The Colorado River is accessible, and it is immense. The Gila River has its sources where there is a vast forest of pine trees, probably the largest pine forest in the United States. That table-land abounds in springs, the snows in winter protect it, and it furnishes an immense amount of water. The lands it waters are the most fertile I ever saw. An acre of that land in its capacity of production is worth 10 acres in almost any other section of the United States. Its fruits are thirty days earlier than the fruits of California, and they are more abundant and better.

The amount of land that can be brought under cultivation there is still unknown. As water is put upon the land and vegetation is brought forth, the land is protected from the sun, the ground is saturated, and you can go on year after year with the same water and bring more land under cultivation. I have no doubt that New Mexico will be a prosperous State in time to come. I would be willing, if it was the desire of the two Territories, if it was the desire of the people there, to unite their fortunes, to vote for the bill as it stands; but I find that they are not in favor of it, that each Territory is opposed to it.

Mr. BEVERIDGE. They have a chance to vote.

Mr. STEWART. No practical chance.

Mr. BEVERIDGE. Yes.

Mr. STEWART. I understand the provision. But they desire to become States. You can not tell how far that may go. You can not tell what influence the misery of Territorial government may have upon them.

I have lived under a Territorial government, and I never want to do it again. It has more disadvantages than you can imagine to have all your officers sent from abroad. Men unacquainted with your resources, unacquainted with the country, go there, as it were, to despoil the people. I have had something to do with Territorial officers. I know how unfit they are in a great and rich mining country, as Nevada was. Although Nevada wanted to come in, it never would have voted to come into the Union, under any circumstances, if her Territorial government had been satisfactory. But a Territorial government is not satisfactory to a growing people and an ambitious people.

The people of these new States have great interests involved. They want to elect their own officers, particularly their own judges, and they ought to have the opportunity to do it at an early time. You can make no mistake in admitting both these Territories separately. They will both be great States; they have the resources. I have passed over them, and every time I was surprised at the new developments I found there, as everybody who passed over them has been surprised.

What a change in the picture between the Missouri River and the Pacific Ocean has occurred in the last forty years! Forty years ago it was regarded as a wilderness—a desert. Men came before the Committee on Railroads at one time when we were examining the value of the various routes across the continent where railroads might be built. There were four or five routes proposed. The committee of which I had charge was instructed to investigate the resources of the different routes, and called men before it of high character, such men as General Sherman, and they stated that the country would produce nothing. Nobody had any conception of such States as have grown up since—what are now the Dakotas, Montana, Idaho, eastern Washington, and eastern Oregon. It was claimed then by many intelligent men that there was nothing of value but a little strip along the Pacific Ocean, and men had to come to the Missouri River to find land fit for habitation. On the contrary, we find that this arid belt that was so condemned is producing some of the great States. Look at Colorado. Her vast mineral resources do not compare with her agricultural resources that are now being developed.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CLARK of Montana. Mr. President, I will take up the time of the Senate for only a few minutes, but I could not remain silent and listen to the statements made by some of the Senators who are opposed to this amendment without adding my protest thereto, as they seem to be based upon ignorance of the facts or upon an assumption of conditions that do not exist.

The Senator from Iowa [Mr. DOLLIVER] has said that "civilization and mud go together," and that there can be no prosperity without rain. Does not the Senator know that the rainfall of this country is generally about equally distributed over all the country, and that in the winter time in the Northwestern

States the snows fall heavily and accumulate in the mountains, where they gradually melt in the summer time, thereby feeding the streams and making irrigation an easy problem?

In the southern country, embracing New Mexico and Arizona, they have a rainfall equally as great, but they usually have dry summers. They have scarcely any snow in the winter time to lie upon the mountains and thereby conserve the water over the dry season; so there is, as the Senator stated, an arid region in that southern country, and he entertains the hope that in the future the genius of man may in time work out this problem and solve it advantageously for the unfortunate people of that section of the country.

I wish to say to the Senator from Iowa that this question has already been thoroughly solved. The act which was passed in this Congress in 1902 providing for the reclamation of the arid lands of the West (as they are all, or a great portion of them at least, arid and semiarid) has put into motion the machinery whereby all of the arid lands of the West may be brought into requisition and made to flourish with fields of grain, gardens, and meadows. By the provisions of that act great areas in the United States have been set apart as forest reserves, thereby enabling the shelter of the timber on the mountains to protect the snow from melting away in the early summer. By the provisions of that act those waters are to be stored in sufficient quantities to be diverted on the adjacent lands.

So there are three principles involved in reclamation—the preservation of the forests, the storage of water, and the diversion of the same to the arable land. This great scheme is being worked out all over the western country. By the provisions of the act the fund which has been created from the proceeds of sales of public lands now amounts to nearly $25,000,000. In the Territory of Arizona about $4,000,000 of the fund is now being expended by the Government in the Salt River Valley near Phoenix. That will, when consummated, bring into cultivation about 150,000 acres of land. Likewise in New Mexico similar projects have been inaugurated. It required immense capital to carry out such enterprises and provide for the storage of water during torrential periods, and it is beyond the reach of the farmer of moderate means to do so. Happily the Government has come to his relief, and hundreds of thousands of acres of arable and fertile soil that lie in the beautiful valleys of New Mexico will, within a decade, be brought into cultivation and prepared for the maintenance of an additional large population.

The Senator from Wisconsin [Mr. SPOONER] depicted a doleful story of the conditions which exist in New Mexico. If we should depend upon what he stated to be true as to the people of the Territory, I would admit that they are not entitled to statehood. The Senator, however, seems to have but little knowledge of conditions in that Territory. There are more churches and fewer prisons than are usually found in a frontier Territory. The native Mexican people are industrious, law-abiding, and religious; they constitute about five-eighths of the population; their children go to schools, learn the English language, and are fast becoming Americanized. The other three-eighths are good enterprising Americans, who had the energy and ambition to push out upon the frontier and build up homes for themselves; and these alone constitute a sufficient population (about 175,000) to warrant their enjoying the privileges of statehood.

Mr. President, an attempt has been made to belittle the resources of that Territory. New Mexico contains very extensive areas of land which are underlaid with valuable deposits of coal. What made the wealth and prosperity of the grand old State of Pennsylvania but its magnificent mines of iron and coal? When the coal mines of New Mexico are developed and more railroads are built this industry alone will give employment to several hundred thousand people. To-day New Mexico is supplying the fuel for the railroads, mines, and smelters of Arizona, also for parts of Texas and old Mexico, and it is shipping large quantities of coal to California for domestic purposes. Moreover, it has extensive mines of lead, silver, and gold; and sheep and cattle raising are great and prosperous industries. The Territory is rich in all the elements of wealth, and it requires no stretch of the imagination as to the future possibilites to demonstrate that it is to-day worthy to be admitted into the sisterhood of States.

Mr. BURROWS. Mr. President, I feel constrained to say just a word in relation to this proposition on a different line from the discussion which has taken place up to this time.

I can not vote for the admission of New Mexico, and my reason for voting against it is that I think it would be a dangerous thing to do. It has been my misfortune to be charged by this Senate with an investigation which has been quite far-reaching, and what I may say to-day in the moment I want it understood that it in no manner reflects, or is intended to reflect, or to give any opinion upon the question to which I refer. But I can not vote for the admission of New Mexico because it would take that Territory out from under the jurisdiction of the United States and lift the hand of the United States off from that Territory, that is now being used to arrest the course of crime and for the purpose of bringing those who are violating the laws of the United States to justice.

The bill itself recognizes the existence of that crime, wherein it is provided that polygamous or plural marriages are forever prohibited. In view of the contention of the Senator from Texas [Mr. BAILEY] and others that such a provision is brutum fulmen, which is undoubtedly true, and that the moment the Territory is admitted as a State it becomes a sovereign, and is at once at liberty to amend its constitution so as to nullify those provisions, we are brought face to face with a condition of things that ought to alarm this Senate and ought to alarm the country.

Mr. BAILEY. Will the Senator from Michigan permit me to ask him a question?

Mr. BURROWS. Certainly.

Mr. BAILEY. Would the argument the Senator from Michigan is advancing apply with as much force against the admission of the two Territories as one State as it would against the admission of the two Territories as separate States?

Mr. BURROWS. Precisely.

Mr. BAILEY. And the Senator, then, intends to vote against the admission of the two Territories as one State?

Mr. BURROWS. I intend to vote against the admission of New Mexico; I shall vote against the admission of Arizona as a separate State; and I shall vote against the admission of the two united as one State for the reasons I am about to assign. The condition of things in Arizona is much worse than it is in New Mexico, and the conditions in both of those Territories constrain me from voting to admit either of them or both of them.

To-day polygamy exists in New Mexico. It has been declared that it is the breeding ground of polygamy; and I happen to be in possession of information, which I can not make public for reasons which the Senate will readily understand, that the condition of things in New Mexico in this regard is startling. Of course, I am not going to discuss the question of polygamy—a crime so monstrous—but we are confronted now with the proposition to admit a Territory into the Union as a State with the crime, as confessedly declared in this bill, existing in the Territory—to admit it into the Union, when the power of the National Government over it will cease, and the State thus admitted can manage its own affairs as an independent sovereign. I only want to call attention to it and to say to the Senate that, in my judgment, it will be a fatal mistake to take this step, and the country will rue it in the not distant future.

In my effort to steer clear from other questions, I care to say but little about it now, but I hold in my hand evidence of the existence of this crime which, for reasons of a public nature, I can not now disclose. If this Territory is not admitted, these violators of public law will be brought to justice, and I vote against its admission because, in my judgment, neither New Mexico nor Arizona should be admitted as a State, separately or together, until they have washed their hands of this abomination and until they are ready to obey the laws of the United States.

Mr. President, this is all I care to say about this subject—simply assigning the reasons why I can not vote for the bill.

Mr. DUBOIS. Mr. President, I have some amendments pending which I intend to offer to the joint statehood bill on the subject just discussed by the Senator from Michigan [Mr. BURROWS].

In view of the disclosures which have been made before a committee of this body, I myself am satisfied that the Congress of the United States will enact such legislation as will stop the practices which have been disclosed to the country by the testimony of the Mormon hierarchy.

I shall vote for the admission of New Mexico as a separate State, having full confidence that Congress will not only regulate affairs there, but that it will regulate affairs in Utah, Idaho, and Wyoming so far as relates to this question and so far as it can constitutionally do so. I shall vote against the admission of New Mexico and Arizona as one State, because there is, in my judgment, more danger in regard to polygamy and polygamous cohabitation in a larger State than in a State composed of New Mexico alone. That is so because there is now a larger nucleus of these people in Arizona, and it is a country to which they will be attracted. They will have the balance of power in a State made up of Arizona and New Mexico, and with the balance of power wielded by one man, who is the head of this organization and who can vote its members as he sees fit, it only requires the balance of power to govern prac-

tically the State on the lines in which we are so much interested.

I think the least danger is to admit New Mexico as a separate State and to stop there until after Congress has done legislating with this question which now confronts the Senate and which must be met in the near future.

As I have said, I have some amendments pending which I shall offer at the proper time. I trust the Senate will adopt them, or, if not, point out in the debate wherein they are faulty. At any rate, these amendments will direct the attention of the Senate along these lines.

As I said a while ago, this investigation has been of such a nature and the country is now aroused to such an extent that Congress must act, and act in such a way as to curb this institution and to stop polygamy and its kindred and attendant evils; but, believing that the safest and best course is to admit New Mexico alone, I shall vote for her admission. If that proposition fails, I shall vote against joining the two Territories.

The PRESIDENT pro tempore. The question is on the amendment.

Mr. CARMACK. What is the pending amendment?

The PRESIDENT pro tempore. The amendment offered by the Senator from California [Mr. BARD] providing for separate statehood for New Mexico.

Mr. CARMACK. I desire to offer an amendment to the amendment. On page 4, line 6, after the word "provide," I move to strike out everything down to and including the word "State," in line 7, and to insert in lieu thereof "in said constitution."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 4, section 21, line 6, of the amendment, after the word "provide," it is proposed to strike out "by ordinance irrevocable without the consent of the United States and the people of said State," and to insert "in said constitution."

Mr. PLATT of Connecticut. How will the clause then read?

The PRESIDENT pro tempore. The Secretary will read it as it is proposed to be amended.

The Secretary read as follows:

And said convention shall provide in said constitution, first, that perfect toleration of religious sentiment, etc.

Mr. BEVERIDGE. Instead of "ordinance irrevocable" it substitutes the word "constitution."

The PRESIDENT pro tempore. The question is on the amendment of the Senator from Tennessee [Mr. CARMACK] to the amendment of the Senator from California [Mr. BARD].

Mr. McCOMAS. Mr. President, the Senator from Michigan [Mr. BURROWS] has discussed the provision on page 25 of this bill prohibiting polygamous marriages. The language, if it is intended to be effective, is too mild to serve such purpose.

It seems to me, Mr. President, that it will be very difficult to put into the ordinance required by the act any provision which might not, by and by, at the will of the people of a sovereign State, be nullified or repealed. But I hope that before this bill shall have finally passed, if it shall pass, a stronger and better provision may be inserted in that place.

The nearness of Arizona and New Mexico to Utah bring to the minds of the Senate and the American people the very serious consideration whether Mormon problems in Utah, now confronting the whole country, may not overlap the boundaries of that State and present themselves in new form in these old Territories to be made a new State. If I believed that in the future, by growth of population and public sentiment, many things which have recently been brought to the attention of the committee, already referred to by its chairman, the Senator from Michigan [Mr. BURROWS], and the Senator from Idaho [Mr. DUBOIS], I would have very serious hesitation about voting for admitting one or both of these Territories; but if the danger must be met, and if the problem is to be minimized, it will be minimized better by adding the American population of Arizona to the population now in New Mexico.

The population of the combined State will present enough of American sentiment to make it most likely that effective prohibition of polygamous or plural marriages will be made by the State. Mr. President, I am not now indicating any opinion on my part as to the result of the investigation to which the Senators from Michigan and Idaho have referred or any opinions I have or that the committee may have, and I am not now indicating my own; but apart from the opinions of Senators in respect to the situations investigated in Utah, it is wise to put in the bill far more effective provisions in regard to this matter than there are here now.

Senators will say they will not be effective, and I am very much inclined to think that a sovereign State can not certainly be deprived of the exercise of the police power for years to come, as we have tried here to-day to provide. I voted for the amendment of the Senator from New Hampshire, though distrusting the legal proposition, believing that for twenty-one years the people of the new State of Oklahoma, when combined with Indian Territory, will probably be willing to support the provision in respect of temperance in the Indian Territory until such time as the Indian race has faded away from the new State as quietly but as surely as the last of the evening clouds are now fading in the evening sky.

The Indian is a transient there and the provision will be effective perhaps as long as he remains. Not so, Mr. President, in respect of the control or the spread of a sect, which controls politics too often, which might, unchallenged and unhampered, work injury to a new commonwealth and bring a condition which the General Government can not probably reach in another new State any more than it can in Utah.

The combination of Oklahoma and Indian Territory is a combination which does not make me hesitate, as it makes some Senators. I was, as a Member of the House of Representatives, one of the parties guilty by my vote of making that hideous succession of angularities in the line which divides Oklahoma and Indian Territory. Mr. President, I have never looked since upon a map of my country and had my eyes light upon that jagged, forked line between Indian Territory and Oklahoma but that I felt not only were the Territories out of joint, but the map of my country was broken like pieces of glass, and it ought to be mended.

This bill gives the opportunity to reunite the territory I helped separate.

I recall the splendid population in that country, part of which I have seen, destined to be one of the greatest States of the Union, and when justice has been done to the fading aboriginal race the new American people will make Oklahoma one of the foremost agricultural States of the Union, and I, who helped to perpetuate the monstrosity by which the bad and unpleasing territorial line of separation was made, am glad of the opportunity now, after long years, by my vote to help wipe it out and help to make one State of that country homogeneous in people, barring the Indians, symmetrical in form, and unlimited in the prospect of a great future.

It seems to me from this discussion that a mistake was made in dividing Arizona and New Mexico fifty years ago. This error has not kept the people out of statehood longer than Alaska and Porto Rico may wait. The praises of a Spanish population will encourage Porto Rico, not only——

The PRESIDENT pro tempore. The time of the Senator from Maryland has expired.

Mr. CARMACK. Mr. President, I have been asked to make a little statement in regard to this amendment.

It proposes simply to strike out the words "and said convention shall provide by ordinance irrevocable, without the consent of the United States and the people of said State," and substitutes simply the words "in said constitution;" providing that it shall do it by a constitutional provision.

It seems to me, Mr. President, that such language as is used here has no business in the act. We are not legislating for the Medes and Persians, but providing for a State of the American Union, and I do not believe we can provide for an irrepealable law—that we can compel a State to enact a law which it will not have the power to repeal without the consent of the United States. This puts us in the attitude of making a treaty between the United States and one of the States of the Union, by which that State agrees forever to maintain upon its statute book a certain law unless it shall come to an agreement with the Government of the United States for the repeal of that law.

I do not believe you can place any limitation upon the power of a State, after it once comes into the Union, to modify its own laws, or any limitation, whatever its effect, except such limitations as are imposed by the Constitution of the United States and by its own constitution.

Mr. LODGE. May I ask the Senator from Tennessee a question?

Mr. CARMACK. Certainly.

Mr. LODGE. I understand that this amendment removes entirely the necessity of getting the consent of the United States.

Mr. CARMACK. Yes, sir; and merely provides that such provision shall be in the constitution.

Mr. LODGE. And the people of the State may change it themselves at any time?

Mr. CARMACK. Of course.

Mr. LODGE. Certainly. I only wanted to make sure that I understood the intention of the Senator.

Mr. CARMACK. I think they could do it anyhow by changing their constitution. I think the language here would be ab-

solutely null. I do not believe we could compel a State to pass an irrevocable law—a law which it would not have the power to change without the consent of Congress.

Mr. LODGE. The Senator's amendment strikes out the words "without the consent of the United States."

Mr. CARMACK. Yes. It strikes out all after the word "provide" down to and including the word "State" in line 7, and simply substitutes "in said constitution," so as to read: "That said convention shall provide in said constitution, first," and so on.

Mr. BAILEY. Mr. President, I hope the amendment of the Senator from Tennessee will be adopted, and I do agree with his statement that Congress has no right to impose that kind of a limitation upon the power of a State. But the trouble is we are seeking to require the State to impose that kind of a limitation on itself. I believe it ought not to be in the bill at all, but if any such exaction is to be in it, it ought to be in as the Senator from Tennessee desires.

Mr. LODGE. Mr. President, of course if we change the words as proposed by the Senator from Tennessee, we leave it to the State to alter these conditions at any time. It is mere form to put in these conditions. As I understand it, we can impose on these States any conditions we choose. The conditions as I read them in the bill seem to be all proper, and this is practically giving them up. So it seems to me a very serious amendment, more serious than I at first understood. The very amendment that the Senate put in to-day by a large majority, in regard to the sale of liquor in the Territories, would pass away at once.

Mr. CARMACK. The same amendment has been adopted in reference to that subject.

Mr. LODGE. This is covered by that original clause, as I understand, as are all these conditions. The sale of liquor is prohibited for a limited period. But they would not be obliged to keep it, even for that period, if this is changed. So it seems to me this is a very vital change in the bill.

Mr. CARMACK. This, as it stands, requires that such a provision shall be put into the constitution.

The PRESIDENT pro tempore. One speech by each Senator on a given amendment is all that the rule allows.

Mr. LODGE. I had not quite finished.

Mr. CARMACK. I thought the Senator from Massachusetts had the floor.

Mr. LODGE. I had not exhausted my time. I have only a few words more to say.

The PRESIDENT pro tempore. The Chair understood that the Senator from Tennessee undertook to take the floor in his own right.

Mr. LODGE. As it is proposed to amend the amendment, it will simply require the State to put such a limitation in the constitution, but State constitutions are easily changed and amended, and it seems to me for all practical purposes it is abandoning the very conditions we are desirous of imposing.

Mr. PLATT of Connecticut. Mr. President, I should prefer that the Senate should not make this amendment. I wish the Clerk would read the amendment as it now stands, and as it will stand if amended.

The SECRETARY. Beginning in line 1, on page 4, the clause is as follows:

> The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State—
>
> First. That perfect toleration of religious sentiment, etc.

It is proposed to strike out the words—

> By ordinance irrevocable without the consent of the United States and the people of said State—

and insert "in said constitution;" so that if amended the last paragraph would read:

> And said convention shall provide in said constitution, first, etc.

Mr. PLATT of Connecticut. Mr. President, I may be mistaken about it, and if so what I am going to say does not apply. But I understand that it covers the question of providing against polygamous marriages, and that being so, I have a single word to say.

I do not think we ought to stand here splitting hairs and running fine distinctions about our rights and powers when we are admitting new States in that section of the country where it is possible that polygamous marriages may be veiled.

I have no question about the power, when admitting a State, to impose upon it any conditions which we think ought to be imposed upon the new State. I have no trouble about making those conditions perpetual with reference to any matter.

Mr. CARMACK. Will the Senator from Connecticut yield for a question?

Mr. PLATT of Connecticut. Certainly.

Mr. CARMACK. Suppose a State should revoke such an ordinance. What would be done?

Mr. PLATT of Connecticut. I want to make it so that a State can not revoke the ordinance.

Mr. CARMACK. Suppose it revokes it, what would be the action of the United States Government?

Mr. PLATT of Connecticut. That is a very serious question. I have not thought there was any remedy in such a case. I do not think we can exclude a State from the Union after we have once admitted it. I do not think we could, after having once admitted it, deny it representation for a breach of the conditions on which it was admitted. But nevertheless I think we have a right to impose the conditions, and I think we ought, especially in this matter, to impose them.

The practice of polygamy is so inimical to our institutions, to our future as a Government, that I think we have a perfect right to say when we admit a State that it must forever provide against such practices; and it does not answer the question to say that if we do make such provision and only admit a State upon such conditions the State may after all violate its solemn promise, and that we have no remedy. We had better put it in such shape that there can be no mistake about what Congress meant when it admitted the State.

If this amendment is adopted it seems to me it will be almost equivalent to saying to the new State, "You may not keep this compact," because we have here the words "an ordinance irrevocable," and this amendment proposes to strike out these words and simply say that the State must so provide in its constitution; and the new State, if it wanted to violate the agreement or the conditions upon which it came in, would point to the action here in Congress and say, "At one time there was a provision in the bill that by an ordinance irrevocable the State should do or should not do this thing, but Congress did not propose to bind the State forever and, therefore, it struck it out and simply said it must put it in its constitution, knowing full well and admitting in the debate the State could change its new constitution." I like the old language very much better than the new.

Mr. McCUMBER. Mr. President, in either instance it seems to me we leave the whole matter to the honor and integrity of the State. For my part, I can see no real objections to inserting in this bill that it shall be made a part of the constitution of the new State. That has been done in every bill which has admitted new States into the Union, so far as I know, and I would ask the Senator who has last spoken if in a single instance any State which has ever been admitted and which was admitted under a requirement that its constitution should contain certain provisions has broken faith with the Government and changed the constitution or that portion of the constitution required by the enabling act?

I think not, and I believe, and sincerely believe, that if the new State is admitted under an implied contract with the Government that it will provide in its constitution the things which have been enumerated, the State will never break faith with that compact; and if I thought it would, it seems to me I would regard it as my moral duty to conclude that the Territory was unfit to be made a State. It seems to me we can safely leave it with the State the same as we have done in all other instances.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from Tennessee [Mr. CARMACK] to the amendment.

The amendment was rejected.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from California [Mr. BARD].

Mr. GORMAN. On that I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary called the roll.

Mr. WETMORE. My colleague [Mr. ALDRICH], if present, would vote "nay" on this question.

The result was announced—yeas 42, nays 40, as follows:

YEAS—42.

| | | | |
|---|---|---|---|
| Alger | Culberson | Kearns | Overman |
| Bacon | Daniel | Latimer | Patterson |
| Bailey | Dubois | McCreary | Penrose |
| Bard | Elkins | McCumber | Perkins |
| Bate | Foraker | McEnery | Simmons |
| Berry | Foster, La. | McLaurin | Stewart |
| Blackburn | Gallinger | Mallory | Stone |
| Carmack | Gibson | Martin | Tallaferro |
| Clark, Mont. | Gorman | Money | Teller |
| Clay | Hansbrough | Morgan | |
| Cockrell | Heyburn | Newlands | |

NAYS—40.

| | | | |
|---|---|---|---|
| Allee | Cullom | Fulton | Nelson |
| Allison | Depew | Gamble | Platt, Conn. |
| Ankeny | Dick | Hale | Platt, N. Y. |
| Ball | Dietrich | Hopkins | Proctor |
| Beveridge | Dillingham | Kean | Quarles |
| Burnham | Dolliver | Kittredge | Scott |
| Burrows | Dryden | Lodge | Smoot |
| Clapp | Fairbanks | Long | Spooner |
| Clark, Wyo. | Foster, Wash. | McComas | Warren |
| Clarke, Ark. | Frye | Millard | Wetmore |

NOT VOTING—8.

| | | | |
|---|---|---|---|
| Aldrich | Crane | Knox | Pettus |
| Burton | Hawley | Mitchell | Tillman |

So Mr. BARD'S amendment was agreed to.

Mr. McCUMBER. I offer an amendment to the bill by striking out all of the bill from line 3, page 1, to line 11 on page 22, inclusive, and inserting in lieu thereof what I send to the Chair.

The PRESIDENT pro tempore. Does the Senator desire the proposed amendment to be read, which simply strikes out a large number of sections of the bill which each Senator has before him?

Mr. CULLOM. What is the substitute?

Mr. ALLISON. It strikes out and substitutes.

The PRESIDENT pro tempore. It substitutes what the Senator sends to the desk.

Mr. CULLOM. Let us have that read.

Mr. ALLISON. It is a proposition, I understand, admitting the present Territory of Oklahoma.

Mr. McCUMBER. And excluding the Indian Territory.

Mr. ALLISON. And excluding the Indian Territory.

The PRESIDENT pro tempore. As a matter of course, the substitute will be read.

Mr. TELLER. Let it be read.

The SECRETARY. Strike out all after the enacting clause to the amendment just adopted, inserted on page 22, after line 11, and in lieu thereof insert:

That the inhabitants of all that part of the area of the United States now constituting the Territory of Oklahoma, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided.

SEC. 2. That all male persons over the age of 21 years, who are citizens of the United States, or who are members of any Indian nation or tribe in said Territory of Oklahoma, and who have resided within the limits of said proposed State for at least six months next preceding the election, are hereby authorized to vote for and choose delegates to form a constitutional convention for said proposed State; and all persons qualified to vote for said delegates shall be eligible to serve as delegates; and the delegates to form such convention shall be fifty-five in number, who shall be elected by the people of the Territory of Oklahoma; and the governor, the chief justice, and the secretary of said Territory shall apportion the Territory of Oklahoma into fifty-five districts, as nearly equal in population as may be, which apportionment shall include the Osage Indian Reservation, and one delegate shall be elected from each of said districts; and shall by proclamation order an election of the delegates aforesaid in said proposed State at a time designated by them within six months after the approval of this act, which proclamation shall be issued at least sixty days prior to the time of holding said election of delegates, and the election for delegates in the Territory of Oklahoma shall be conducted, the returns made, the result ascertained, and the certificates of all persons elected to such convention issued in the same manner as is prescribed by the laws of said Territory regulating elections for Delegates to Congress.

That the capital of said State shall temporarily be at the city of Guthrie, in the present Territory of Oklahoma, and until changed by the constitution or legislative enactment of said State of Oklahoma.

SEC. 3. That the delegates to the convention thus elected shall meet at the seat of government of said Oklahoma Territory on the fifth Tuesday after their election, excluding the day of election in case such day shall be Tuesday, and, after organization, shall declare, on behalf of the people of said proposed State, that they adopt the Constitution of the United States; whereupon the said convention shall, and is hereby authorized to, form a constitution and State government for said proposed State. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State—

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that polygamous or plural marriages and the sale, barter, or giving of intoxicating liquors to Indians are forever prohibited.

Second. That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal, and control of the United States; that land belonging to citizens of the United States residing without the limits of said State shall never be taxed at a higher rate than the land belonging to residents thereof; that no taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

Third. That the debts and liabilities of said Territory of Oklahoma shall be assumed and paid by said State.

Fourth. That provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control; and said schools shall always be conducted in English: *Provided*, That this act shall not preclude the teaching of other languages in said public schools.

Fifth. That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

SEC. 4. That in case a constitution and State government shall be formed in compliance with the provisions of this act the convention forming the same shall provide by ordinance for submitting said constitution to the people of said proposed State for its ratification or rejection at an election to be held at a time fixed in said ordinance, at which election the qualified voters for said purposed State shall vote directly for or against the proposed constitution, and for or against any provisions separately submitted. The returns of said election shall be made to the secretary of the Territory of Oklahoma, who, with the chief justice thereof, shall canvass the same; and if a majority of the legal votes cast on that question shall be for the constitution the governor of Oklahoma Territory shall certify the result to the President of the United States, together with the statement of the votes cast thereon, and upon separate articles or propositions and a copy of said constitution, articles, propositions, and ordinances. And if the constitution and government of said proposed State are republican in form, and if the provisions in this act have been complied with in the formation thereof, it shall be the duty of the President of the United States, within twenty days from the receipt of the certificate of the result of said election and the statement of votes cast thereon and a copy of said constitution, articles, propositions, and ordinances from said commission, to issue his proclamation announcing the result of said election; and thereupon the proposed State of Oklahoma shall be deemed admitted by Congress into the Union, under and by virtue of this act, on an equal footing with the original States, from and after the 4th day of March, 1906. The original of said constitution, articles, propositions, and ordinances, and the election returns, and a copy of the statement of the votes cast at said election, shall be forwarded and turned over by the secretary of the Territory of Oklahoma to the State authorities of said State.

SEC. 5. That the sum of $75,000, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated, for defraying the expenses of said election and convention, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the Territorial legislature of the Territory of Oklahoma.

SEC. 6. That until the next general census, or until otherwise provided by law, the said State of Oklahoma shall be entitled to three Representatives in the House of Representatives of the United States, to be elected from said State at large, until said State shall have been divided into legislative districts by the legislature thereof.

And the said Representatives to the Fifty-ninth Congress together with the governor and other officers provided for in said constitution, shall be elected on the same day of the election for the ratification or rejection of the constitution; and until said officers are elected and qualified under the provisions of such constitution and the said State is admitted into the Union, the Territorial officers of Oklahoma Territory shall continue to discharge the duties of their respective offices in said Territory.

SEC. 7. That upon the admission of the State into the Union sections numbered 16 and 36, in every township in Oklahoma Territory, and all indemnity lands heretofore selected in lieu thereof, are hereby granted to the State for the use and benefit of the common schools: *Provided*, That sections 16 and 36 embraced in permanent reservations for national purposes shall not at any time be subject to the grant nor the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character, nor shall land owned by Indian tribes or individual members of any tribe be subjected to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain: *Provided*, That there is sufficient untaken public land within said State to cover this grant: *And provided*, That in case any of the lands herein granted to the State of Oklahoma have heretofore been confirmed to the Territory of Oklahoma for the purposes specified in this act, the amount so confirmed shall be deducted from the quantity specified in this act.

SEC. 8. That section 13 in the Cherokee Outlet, the Tonkawa Indian Reservation, and the Pawnee Indian Reservation, reserved by the President of the United States by proclamation issued August 19, 1893, opening to settlement the said lands, and by any act or acts of Congress since said date, and section 13 in all other lands which may be opened to settlement in the Territory of Oklahoma, and all lands heretofore settled in lieu thereof, is hereby reserved and granted to said State for the use and benefit of the University of Oklahoma, the University Preparatory School, the normal schools, and the Agricultural and Mechanical College, and the Colored Agricultural Normal University of said State, the same to be disposed of as the legislature of said State may prescribe: *Provided*, That the said lands so reserved or the proceeds of the sale thereof shall be safely kept or invested and held by said State, and the income thereof, interest, rentals, or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of said State, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college, or university.

That section 33, and all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation, and acts for charitable and penal institutions and public buildings, shall be apportioned and disposed of as the legislature of said State may prescribe.

SEC. 9. That said sections 16 and 36, and lands taken in lieu thereof, herein granted for the support of the common schools, may be appraised and sold at public sale in 160-acre tracts, or less, under such rules and regulations as the legislature of the said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, the proceeds to continue a permanent school fund, the interest of which only shall be expended in the support of such schools. But said lands may, under such regulations as the legislature may prescribe, be leased for periods not to exceed five years; and such lands shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 10. That said sections 13 and 33, aforesaid, if sold, may be appraised and sold at public sale, in 160-acre tracts, or less, under such rules and regulations as the legislature of said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, but the same may be leased for periods of not more than five years, under such rules and regulations as the legislature shall prescribe, and shall not be subject to homestead entry or any other entry under the land laws of the United States, whether sur-

veyed or unsurveyed, but shall be reserved for designated purposes only and until such time as the legislature shall prescribe the same shall be leased under existing rules: *Provided*, That in case of the sale of said lands under the provisions of sections 9 and 10 of this act the leaseholder does not become the purchaser, all permanent improvements shall be appraised at their fair and reasonable value, the lessee to receive the amount of said appraisement, under such rules and regulations as the legislature may prescribe.

SEC. 11. That an amount equal to 5 per cent of the proceeds of the sales of public lands lying within said State shall be paid to the said State, to be used as a permanent fund, the interest only of which shall be expended for the support of the common schools within said State.

SEC. 12. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September 4, 1841, which section is hereby repealed as to said State, and in lieu of any claim or demand of the State of Oklahoma under the act of September 28, 1850, and section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of Oklahoma, the following grant of land is hereby made to said State from public lands of the United States within said State, for the purposes indicated, namely: For the benefit of the Oklahoma University, 200,000 acres; for the benefit of the University Preparatory School, 150,000 acres; for the benefit of the Agricultural and Mechanical College, 150,000 acres; for the benefit of the Colored Agricultural and Normal University, 100,000 acres; for the benefit of normal schools, 300,000 acres.

SEC. 14. That said State when admitted as aforesaid shall constitute one judicial district, to be known as the district of Oklahoma, and the circuit and district courts for the district shall be held one term at Guthrie and one term at Oklahoma City, alternately, each year, for the time being. And the said district shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit. There shall be appointed for said district one district judge, one United States attorney, and one United States marshal. There shall be appointed a clerk for said district, who shall keep his office at Guthrie for the time being. The regular term of said courts shall be held at the places designated in this act on the first Monday in January and the first Monday in June in each year, and only one grand jury and one petit jury shall be summoned in each of said circuit and district courts. The circuit and district courts of said district and the judges thereof, respectively, shall possess the same powers and jurisdiction and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerk of each of the circuit and district courts of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation now allowed by law to officers performing similar services for the United States in the Territory of Oklahoma; and that the laws and procedure of the present Territory of Oklahoma, as far as applicable, shall extend over and apply to said State until changed by the legislature thereof.

SEC. 15. That all cases of appeals or writs of error heretofore prosecuted and now pending in the Supreme Court of the United States or the circuit court of appeals for the eighth circuit, upon any record of the supreme courts of said Territory, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said Supreme Court of the United States and the said circuit court of appeals. And the mandate of execution or other proceedings shall be directed by the Supreme Court of the United States or said circuit court of appeals to the circuit or district courts hereby established within the said State succeeding the Territory from which such record is or may be pending, or to the supreme court of said State or other State court therein established, as the nature of the case may require.

SEC. 16. That the said circuit and district courts and the courts of said State shall, respectively, be the successors of the courts of Oklahoma Territory as to all such cases arising within the limits of the Territory described in the first section of this act, with full power to proceed with the same and award mesne or final process therein; and that from all judgments and decrees of the supreme courts of said Territory or the United States courts for said Territory in any case arising within the limits of said State prior to admission the parties to such judgments or decrees shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States or to the circuit court of appeals for the eighth circuit as they shall have had by law prior to the admission of said State into the Union.

SEC. 17. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of said Territory at the time of admission as a State and arising within the limits of such State whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts each, respectively, shall be the successors of said supreme and district courts of said Territory and in respect to all other cases and matters pending in the supreme or district courts of said Territory or in the United States courts for said Territory at the time of the admission of such State, arising within the limits of said proposed State, the courts of said State shall, respectively, be the successors of said supreme and district Territorial courts and the United States courts in said Territory. And all the files, records, indictments, and proceedings relating to any such cases shall be transferred to such circuit, district, and State courts, respectively, and the same shall be proceeded with there in due course of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of said State shall be pending, in any Territorial courts of said Territory or the United States courts for said Territory shall abate by the admission of said State into the Union; but the same shall be transferred and proceeded with in the proper United States circuit, district, or other State court, as the case may be: *Provided, however*, That in all civil actions, causes, and proceedings in which the United States is not a party transfer shall not be made to the circuit and district courts of the United States, except it be a case which, under existing laws, might be transferred from a State court to the courts of the United States, and upon written request of one of the parties to such action or proceeding, filed in the proper court, as now by law required, and in the absence of such request such cases shall be proceeded with in the proper State court.

SEC. 18. That the constitutional convention may by ordinance provide for the election of officers for a full State government, including members of the legislature and three Representatives to Congress, and may attach the Osage Indian Reservation to counties contiguous or constitute the same a separate county and designate the county seat thereof, and shall provide rules and regulations and define the manner of conducting the first election for officers in said counties. Such State government shall remain in abeyance until the State shall be admitted into the Union and the election for State officers held, as provided for in this act. The State legislature, when organized, shall elect two Senators of the United States in the manner now prescribed by the laws of the United States, and the governor and secretary of said State shall certify the election of the Senators and Representatives in the manner required by law; and said Senators and Representatives shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States. And the officers of the State government formed in pursuance of said constitution as provided by said constitutional convention shall proceed to exercise all the functions of such State officers; and all laws of said Territory in force therein at the time of its admission into the Union shall be in force in said State, except as modified or changed by this act or by the constitution of the State, and the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States.

Mr. McCUMBER. Mr. President, I think it proper to explain very briefly what this amendment does. That portion which is stricken out from page 1 down to line 12 on page 22 of the original bill provides for the admission of Oklahoma and Indian Territory into the Union as one State. By this amendment that is all stricken out, and in lieu thereof we have the provision for the admission of Oklahoma as a single State, leaving Indian Territory off. There has been no change from the original bill as it was drafted by the Committee on Territories with reference to anything relative to Oklahoma Territory distinct from Indian Territory. The only amendment that has necessarily been made is to this extent: The combination of the two Territories requires five Representatives. Under the population, as indicated by the Senator from Minnesota [Mr. NELSON], Oklahoma would be entitled to three Representatives. Therefore the amendment provides for three. It provides for only one district court; and the other particular amendment I will state. The original bill, of course, provided for a donation of $5,000,000 for school purposes. This was due to the fact that Indian Territory has no school lands. I strike out that $5,000,000 donation, as we do not deal with Indian Territory.

Another provision is striken out, that which provides that the seat of government shall for a period of five years remain in a particular place, and it allows the constitutional convention or legislature to locate the capital. In other respects I believe there have been no changes whatever.

Now, Mr. President, I want to say just one word about Indian Territory as connected with Oklahoma and the effect of the combination of the two Territories. It is admitted that there are about 700,000 people in Oklahoma and about 500,000 in Indian Territory, in all about 1,200,000. Under a statute of the United States passed, I think, in 1901 we provided for the allotment of the Indian lands and provided for the most part that the allotments should be held for twenty-one years. All of their other allotments may be disposed of, as I now remember, at the expiration of five years. The five years will be up in a little more than a year's time. The result of making a State now out of Indian Territory will be that we immediately surrender control over the entire Indian population. That population to-day consists of some 50,000 or 75,000 Indians. Therefore, they will become citizens of the new State, and as such citizens of the new State we shall have no control over their property, because the State will have the exclusive control.

The Senator from Texas [Mr. BAILEY] stated very aptly that we signed the death warrant for these Indians when we allowed the white settlers to come in. Mr. President, if we did sign the death warrant we have given them reprieves from day to day until the present time. The result of this bill will be to sign the execution, because immediately the right to sell these lands has inured and the time has arrived, then the Indian will always sell his property and the children of the present Indians will have no property left. As a result, in twenty-five years we will have an army of Indian paupers on our hands to be taken care of by the Government. For that reason alone it seems to me that it should be changed.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. BEVERIDGE. Mr. President, this amendment is a blow at a proposition upon which all parties, all creeds, and all peoples in the two Territories in question are as one. Not only that, Mr. President, it is an amendment which strikes at the convictions of two-thirds of the Senate, if the people voted upon this proposition alone. The people of both the Indian Territory and of Oklahoma have expressed themselves in both political conventions. Seven hundred thousand people in one, perhaps 600,000 in another, are asking at the hands of this Congress a

union; they are asking that they shall be made one State, as they were originally one Territory.

Mr. President, that people are one in industry; they are one in religious organization; they are one in political organization of both parties. The wholesale association of the Territory is a unit. The religious organization of the two Territories is a unit. The railroads of the Territories are built as if it was one State. They are asking Congress not for separate statehood; they have taken that question up, they have debated it upon every stump in both Territories, and they have given their verdict upon it. Not till this hour has it been supposed that any person would attempt to deny these people their rightful meed and what they have been asking of Congress for the last two years.

Mr. President, why should not these people be admitted as they are now requesting us to admit them? In numbers they are abundant. In area they are generous—about the same size as the neighboring Western States, about the same size as Kansas.

Can it be, Mr. President, that this is merely a method of killing the entire bill? Can it be, Mr. President, that this is a method (because the Senator well knows that will be its effect) of denying to the people of either of these Territories statehood for the next year or two years, or perhaps indefinitely?

Mr. President, this measure has been taken up not only in the Territories, but in both Houses of Congress. In the other House of Congress, after elaborate debate, it had a respectable majority, and upon this side of the National Legislature it had almost unanimous support until it became involved with the other question of Arizona and New Mexico.

Mr. President, it is a question of the denial of rights to a people who are here praying that they may be given their rights. In the Indian Territory the conditions are pitiable. Petitions, telegrams, letters have poured in upon this Congress, upon every member of the Senate, upon everybody who has had anything to do with this legislation. Six hundred thousand white people, of our blood, our language, our faith, American citizens as good, as noble, as true as anybody in any portion of this country are in the Indian Territory to-day without any provision for schools with which they can educate their children, without public roads, without insane asylums where their unfortunates may be cared for. Is this condition to continue, Mr. President? Yet that is what the amendment of the Senator from North Dakota proposes. I do not believe that it will receive many votes on either side of this Chamber.

This is a question which transcends all political considerations. It rises above all simple differences; it rises above every question that has been discussed in this debate; and it goes not only to the convenience, but to the sacred rights of American citizens, who are praying that this Congress will give it to them.

How long shall be delayed these common necessities of civilization to 600,000 people who have none, for the Indian Territory has not Territorial government? Neither could they have any Territorial government at this session of Congress. Shall we for another year, for another two years, for another three years, indefinitely, say to them: "You must live as you have lived, with your insane uncared for, with no schools for your children, with none of the conveniences of modern life, or of any life which free and equal laws would give to you." Shall we say to them: "You must remain there among 80,000 Indians without any kind of public rule?" I do not think, Mr. President, that such a proposition as that, upon high moral grounds, which search the souls of men, ought to receive any votes upon either side of this Chamber.

No, Mr. President, the bill is a good proposition—equitable, fair, reasonable, and just in every part of its provisions. It is for the reunion of two Territories into one great State about the size of its neighboring State of Kansas, or the State of Nebraska, and much less than the State of the Senator from North Dakota; and in one part of that Territory the people to-night, suffering as they are, are praying this Congress for relief; and I hope we will not deny it to them.

Mr. BAILEY. Mr. President, a word only. I intend to vote for the amendment of the Senator from North Dakota [Mr. MCCUMBER] because I believe both of these Territories ought to be made States. If the amendment proposed by the Senator from North Dakota shall be adopted, I intend immediately thereafter to offer an amendment providing for the admission of the Indian Territory as a separate and independent State. If the Senator's amendment shall be voted down, then, of course, it will be a waste of the Senate's time for me to propose an amendment to make a separate and independent State of the Indian Territory.

But while I believe these two Territories ought to be admitted into the Union as separate States, I would infinitely prefer to admit them as one State rather than to leave the Indian Territory, with its six or seven hundred thousand people, without the benefits of statehood.

Senators who have never resided in or near a Territory can have but a faint conception of the eagerness with which the people there hail any proposition which will relieve them from the vassalage of Territorial administration and confer upon them the right and power to govern themselves. This is true of all Territories; and I beg the Senator from North Dakota to remember that it is especially true of the Indian country, because the intelligent enterprising white people who have gathered there have been denied the poor privilege of even a Territorial form of government. For years they have been compelled to work out their destiny under the orders and regulations of the Interior Department. Even if the Interior Department were administered by an upright and a wise lawgiver, this condition would be intolerable to men raised under the institutions of free and self-governing States. But, sir, the people there have not always had the benefit of even the judgment of the Secretary of the Interior himself, and much which has deeply concerned their vital interests has been the work of indifferent, and sometimes of incompetent, subordinates. I am not willing to continue 700,000 American citizens in that condition. Therefore if I can not give them separate statehood, which I believe they deserve, I will vote to give them joint statehood as the best that can be obtained.

Mr. BATE. Mr. President, I am one of those who believe that the Indian Territory should not be put into statehood with Oklahoma. I think they should be separate. Oklahoma would make a grand State, as has been shown by the manner in which it sprung into existence like magic. It has increased its population to six or seven hundred thousand people in a few years, a population composed of the best men and women from the mighty West, who have gone to that country. They are there in sufficient numbers and have the necessary resources to make a magnificent State. Oklahoma has an area as large as that of five New England States, exclusive of Maine. Within that area there are, as I have said, six or seven hundred thousand inhabitants. It is a splendid country, and if admitted itself as a State it will make a magnificent one, and I want to see it admitted.

The Indian Territory, Mr. President, I think, would be a drag upon Oklahoma. We ought not, in my opinion, to admit the Indian Territory to statehood immediately. I think for the present it ought to be kept in a Territorial condition, and be in charge of the Government of the United States. The Indians, who largely inhabit it, being our wards, we should retain the relation of guardian toward them. I say it is the duty of the Government to look to their interests and see that they are properly attended to, and to see that the laws which are enacted for that Territory shall be such as will save them from the curse of the liquor habit.

We have been struggling here to-day and we have passed some amendments to this bill under the inspiration of the Senator from New Hampshire [Mr. GALLINGER], whom I do not now see in his seat and who, I am sure, wanted to be heard on this amendment. I think that Senator has one or two amendments to offer for the purpose of protecting those Indians from the curse of alcohol. If once admitted as a State we can not, of course, longer protect the inhabitants of that Territory; but while they continue under a Territorial form of government the United States can step in and control or stop that traffic.

I think it is due the Indians that we should retain that Territory under the control of the United States, not only for that reason, but for the further fact that there are children and minors there who would be affected. What are you going to do about regulating the liquor business? You ought to calmly consider the situation and then act upon it; and I ask Republicans and Democrats here to act together on this question.

What is the history of the great parties in all their conventions in regard to statehood? Not a single national Democratic or Republican convention, as far back as you can go, has ever asked that the Indian Territory be made a State or be united with some other State. On the contrary, what have they done? They have referred in terms and by name to Oklahoma, New Mexico, and Arizona, but they have never once mentioned the Indian Territory. Here, then, Senators are running counter to the express wishes of our people in their national conventions.

Nobody expected the union of these two Territories to be made, Mr. President. There is a peculiar history connected with the Indian Territory as to statehood which I think should be observed. There are about 80,000 or 90,000 Indians there. So far as the white people are concerned, I want to see them properly taken care of, but I do not want to see it done at the

expense of the poor Indians. They own the land; it is yet theirs, and but for the Atoka agreement there would never have been any chance to take it away from them.

Mr. President, when we see the conditions there, when we see that the courts can not regulate them, when we see that the Government of the United States can stretch its long arm out there and protect the Indians, when we see that they are the owners of the land and that they own the house, shall we propose to step in and kick them out? That is the situation. There is a moral obligation involved in this matter. I say we have a right to erect a separate State of the Indian Territory, after a while, though not now. I shall vote for the amendment upon this ground.

I think, Mr. President, if every Senator will take to himself this moral view of it, or even if he takes a party view of it and sees that his party follows the right, the Indians will not be removed from the Federal control. I pray, Mr. President, that the Senate will take a just and proper view of this matter and will retain the Indian Territory in its present Territorial form.

The PRESIDENT pro tempore. The question is on the amendment of the Senator from North Dakota [Mr. McCUMBER].

Mr. McCUMBER. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. BATE. I wish to have stated exactly what the amendment is.

The PRESIDENT pro tempore. What is the Senator's request?

Mr. BATE. I understand the amendment provides for the admission of Oklahoma by herself as a State?

The PRESIDENT pro tempore. That is correct.

The Secretary proceeded to call the roll.

Mr. MONEY (when Mr. MORGAN'S name was called). The Senator from Alabama [Mr. MORGAN] was forced to leave the Chamber a moment ago, and told me he had a pair with the junior Senator from Illinois [Mr. HOPKINS].

The roll call was concluded.

Mr. BAILEY (after having voted in the affirmative). Mr. President, I voted "yea." Since voting I recall that the Senator from Arkansas [Mr. CLARKE], who is opposed to the amendment, was called out of the Chamber for a moment and requested me to pair with him. I agreed to do so, and, therefore, withdraw my vote.

Mr. HOPKINS (after having voted in the negative). I inquire if the senior Senator from Alabama [Mr. MORGAN] has voted?

The PRESIDENT pro tempore. The Chair is informed that he has not voted.

Mr. HOPKINS. I am paired with that Senator, and, therefore, withdraw my vote. If he were present, I should vote "nay."

The result was announced—yeas 32, nays 45, as follows:

YEAS—32.

| | | | |
|---|---|---|---|
| Bacon | Daniel | Latimer | Newlands |
| Bard | Dubois | McCreary | Overman |
| Bate | Foster, La. | McCumber | Patterson |
| Berry | Gallinger | McEnery | Platt, N. Y. |
| Blackburn | Gibson | McLaurin | Simmons |
| Carmack | Gorman | Mallory | Stone |
| Cockrell | Hansbrough | Martin | Taliaferro |
| Culberson | Heyburn | Money | Teller |

NAYS—45.

| | | | |
|---|---|---|---|
| Alger | Depew | Gamble | Platt, Conn. |
| Allee | Dick | Hale | Proctor |
| Allison | Dietrich | Kean | Quarles |
| Ankeny | Dillingham | Kearns | Scott |
| Ball | Dolliver | Kittredge | Smoot |
| Beveridge | Dryden | Lodge | Spooner |
| Burnham | Elkins | Long | Stewart |
| Burrows | Fairbanks | McComas | Warren |
| Clapp | Foraker | Millard | Wetmore |
| Clark, Wyo. | Foster, Wash. | Nelson | |
| Clay | Frye | Penrose | |
| Cullom | Fulton | Perkins | |

NOT VOTING—13.

| | | | |
|---|---|---|---|
| Aldrich | Clarke, Ark. | Knox | Tillman |
| Bailey | Crane | Mitchell | |
| Burton | Hawley | Morgan | |
| Clark, Mont. | Hopkins | Pettus | |

So Mr. McCUMBER'S amendment was rejected.

Mr. GALLINGER. On page 7, section 4, line 8, after the word "question," I move to insert the words "in each of said Territories."

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. On page 7, section 4, line 8, after the word "question," it is proposed to insert "in each of said Territories;" so as to read:

SEC. 4. That in case a constitution and State government shall be formed in compliance with the provisions of this act the convention forming the same shall provide by ordinance for submitting said constitution to the people of said proposed State for its ratification or rejection at an election to be held at a time fixed in said ordinance, at which election the qualified voters for said proposed State shall vote directly for or against the proposed constitution, and for or against any provisions separately submitted. The returns of said election shall be made to the secretary of the Territory of Oklahoma, who, with the chief justice thereof and the chief justice or senior judge of Indian Territory, shall canvass the same; and if a majority of the legal votes cast on that question in each of said Territories shall be for the constitution, the governor of Oklahoma Territory and the judge senior in service of Indian Territory shall certify the result to the President of the United States, together with the statement of the votes cast thereon, and upon separate articles or propositions and a copy of said constitution, articles, propositions, and ordinances.

Mr. GALLINGER. Mr. President, if this amendment should be adopted, it would simply give local option to the Territory of Oklahoma and the Indian Territory, as it has been given to the Territories of New Mexico and Arizona. In other words, that they would not become one State unless a majority vote should be cast in both of the Territories. It seems to me that that having been conceded in the case of New Mexico and Arizona, it ought to be conceded to these two Territories without question. I hope it will be adopted.

Mr. PLATT of Connecticut. I understand the cases are entirely different; that Oklahoma and the Indian Territory, so far as I have heard, desire to be admitted as one State.

Mr. GALLINGER. I have had a very large number of petitions to the contrary, and I have had letters and telegrams from the Territory saying they wish this privilege extended to them; that they want the privilege of voting on this question. I should judge from what I hear that a majority of the people in the Indian Territory very likely will vote for jointure, but, nevertheless, it seems to me they ought to be given the privilege of expressing their wish in the matter.

Mr. ELKINS. Let the amendment be again read.

Mr. CLAY. I did not catch the amendment when it was read. I should be glad to have it read again if it is short.

The PRESIDENT pro tempore. The amendment will again be stated.

The SECRETARY. After the word "question," in line 8, on page 7, it is proposed to insert the words "in each of said Territories."

Mr. BATE. Do I understand that that is the amendment offered by the Senator from New Hampshire?

The PRESIDENT pro tempore. It is the amendment submitted by the Senator from New Hampshire.

Mr. STEWART. Mr. President, I do not think there is a sufficient reason for putting the people to that expense and trouble. I have perfect confidence that the great mass of people would desire to come in as one State rather than to be kept out. The negative of the proposition would get very few votes, and this would entail an unnecessary expense. The general desire on the part of both Territories is to come in. A good many wish it could be separately. The only embarrassment I have about it is whether the Indian Territory is thoroughly prepared; whether Congress would be embarrassed in taking care of the Indians. But on investigating the whole thing I think Congress will still have jurisdiction of the Indians, and can take care of them. It has gone so far that I think the best thing we can do is to admit them as one State and admit them at once. It would be better for all concerned.

Mr. HALE. I move to lay the amendment on the table, and on that I call for the yeas and nays.

The yeas and nays were ordered; and the Secretary called the roll.

Mr. BACON. The junior Senator from Rhode Island [Mr. WETMORE] has been called from the Chamber by illness, and I have agreed to stand paired with him on this vote.

The result was announced—yeas 41, nays 31, as follows:

YEAS—41.

| | | | |
|---|---|---|---|
| Allee | Depew | Hale | Platt, Conn. |
| Allison | Dick | Kean | Proctor |
| Ankeny | Dillingham | Kearns | Quarles |
| Ball | Dolliver | Kittredge | Scott |
| Beveridge | Dryden | Lodge | Smoot |
| Burnham | Elkins | Long | Spooner |
| Burrows | Fairbanks | McComas | Stewart |
| Clapp | Foster, Wash. | Millard | Warren |
| Clark, Wyo. | Frye | Nelson | |
| Clarke, Ark. | Fulton | Penrose | |
| Cullom | Gamble | Perkins | |

NAYS—31.

| | | | |
|---|---|---|---|
| Bailey | Cockrell | Latimer | Newlands |
| Bard | Culberson | McCreary | Overman |
| Bate | Dubois | McCumber | Patterson |
| Berry | Foster, La. | McEnery | Simmons |
| Blackburn | Gallinger | McLaurin | Stone |
| Carmack | Gibson | Mallory | Taliaferro |
| Clark, Mont. | Gorman | Martin | Teller |
| Clay | Heyburn | Money | |

NOT VOTING—18.

| | | | |
|---|---|---|---|
| Aldrich | Daniel | Hopkins | Platt, N. Y. |
| Alger | Dietrich | Knox | Tillman |
| Bacon | Foraker | Mitchell | Wetmore |
| Burton | Hansbrough | Morgan | |
| Crane | Hawley | Pettus | |

So Mr. GALLINGER's amendment was laid on the table.

Mr. DOLLIVER. I offer the amendment I send to the desk.

The PRESIDING OFFICER (Mr. KEAN in the chair). The Senator from Iowa offers an amendment, which will be stated.

The SECRETARY. On page 17, line 5, after the word "Muscogee," insert: "One term at Tulsa."

Mr. BEVERIDGE. The committee accepts the amendment.

The amendment was agreed to.

Mr. DOLLIVER. I offer a further amendment.

The SECRETARY. On page 17, line 19, after the word "January," insert the words "at Tulsa on the 1st day of April."

Mr. BAILEY. Mr. President, I hope the Senate is not going to forestall the right of those people to locate their own courts through their own Senators and Representatives. I have received twenty urgent applications from different places to locate a court here and one there, hoping thus in the bill itself to acquire an advantage of a rival town.

Before the present conditions are changed the State will be admitted to the Union. She will have her own Senators here. She will have her own Representatives in the other House. Those men, responsible to their people, can decide and ought to decide upon the location of the courts.

The Senator from Nevada [Mr. STEWART] well suggests to me that she will have her Senators and Representatives here before a single Federal judge can be appointed, because there will be in proper contemplation of the law no judge of the United States court in those districts until the State is admitted into the Union.

I do not know what are the merits between Tulsa and some rival town. I do know that I have been plied with frequent and somewhat urgent petitions from it and from many others; but I have said to them all alike, "This matter ought to be left until the Senators and the Representatives from the new State can come and settle it for themselves."

I beg the Senate to remember that at present the bill adopts the artificial, and, as I hope, the soon to disappear line of demarcation between the Indian Territory and Oklahoma Territory. Upon any proper division it is more than probable that the judicial districts will take a different direction, and yet under this bill we will have courts already established at towns which will be inaccessible or inconvenient to the people when a proper system is established.

Mr. DOLLIVER. I rise merely to call the attention of the Senator to the fact that practically all of the competing towns seem long since to have been nicely taken care of in the pending bill except the town of Tulsa.

Mr. BAILEY. There is the town of Chickasha. It is on the Rock Island Railroad, and, as I recall now, there is no court established by this bill on the Rock Island road. There is at present a session of the Territorial court held there. But there is no provision, as I recall, for any court in all the long line of territory through which the Rock Island Railroad runs.

Mr. LONG. If the Senator from Texas will yield, I will say that an amendment has been adopted locating a court at Enid, in the western district.

Mr. BAILEY. That makes it all the more objectionable to me, because a court at Enid will require the people in the southern part of that Territory to travel still farther in order to reach a Federal court. They will have to travel beyond the Red River to Enid, 150 miles, and it is unconscionable to send men—litigants, witnesses, and jurors—in a Territory as small as that a distance of 150 miles.

But this only illustrates that neither I nor any other Senator, even if we possessed a definite knowledge of the towns and railroads in the Indian Territory, would be prepared to locate the courts, for no man knows where the lines of the judicial districts will run when the Territories become a State.

If it has been arranged that my amiable friend, the Senator from Iowa, is going to take care of some of his constituents now residing there, I am going to interpose no further objection; but I have myself seen so many efforts of this kind that I believe it ought not to be tolerated by the Senate. But as other Senators are going to take care of their friends, I think I probably have as many friends at Chickasha as any other Senator has at any other place in the Territory, and I ask unanimous consent that a court may also be located at Chickasha.

Mr. BEVERIDGE. I should like to oblige the Senator from Texas. I am very glad to oblige any Senator about the location of the courts, when I can. I recognize the point the Senator makes that there are probably too many courts in the new State; and yet when it comes to the distribution of them, they are distributed about as well as they could be distributed. There must be an end some time, and for that reason I am sorry to say that the committee can not accept the suggestion of the Senator from Texas.

Mr. BAILEY. It must end before it gets to me instead of after me, I presume. We will see about that.

Mr. BEVERIDGE. If the Senator had been in in time——

Mr. BAILEY. I was in in time two weeks ago when the Senator from Minnesota [Mr. NELSON] was the deputy in charge of the bill. I then sought to provide for Chickasha. There are South McAlester, Ardmore, and Chickasha, going east and west, and all three on the line of the road running north and south.

I have the same amiable weaknesses that everybody else has. So long as the public service is not interfered with, I like to help my old neighbors and my present friends, and I should like to have a session of the court located at Chickasha, and as the price of peace, I hope the Senator will agree to it.

Mr. BEVERIDGE. I will ask the Senator whether he really thinks there ought to be a term of the court at Chickasha?

Mr. BAILEY. I will say to the Senator in all earnestness, I do. The Senator will recall——

Mr. BEVERIDGE. I see no reason, if the Senator thinks so, why we should stop with the Senator. So let us include the Senator and Chickasha.

Mr. BAILEY. All right.

Mr. DOLLIVER. Mr. President, I am in hearty accord with that suggestion, but I should dislike to get my modest amendment involved in that proposition, because the supreme court by vote of the Senate has been located at the town for which I am speaking, and the amendment now pending is for an adjustment of the terms, so as not to interfere with the terms already established in other places.

I would ask my friend the Senator from Texas to permit the terms to be adjusted, and then he can get an amendment for their still further adjustment in respect to Chickasha.

Mr. STEWART. Mr. President, this is child's play. It may gratify somebody for the time being. It is the first time I ever knew of judicial districts being established in a State before it was admitted. Generally the practice has been to wait until it becomes a State.

It seems to me it is premature. It may gratify somebody, but it will not amount to anything. When it gets to be a State, the State will district it as it suits itself and establish its courts.

Mr. BEVERIDGE. I confess my fear is there will be more courts than there is business to do, and there will not be enough business to hold court for one session at each place. Nevertheless, we are in an agreeable mood now; so let us include Chickasha by all means.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Iowa [Mr. DOLLIVER].

The amendment was agreed to.

The PRESIDING OFFICER. The next amendment proposed by the Senator from Iowa [Mr. DOLLIVER] will be stated.

The SECRETARY. On page 17, line 20, strike out the word "May" and insert the word "June;" so as to read "the first Monday in June."

The amendment was agreed to.

Mr. DOLLIVER. I suggest that if the amendment establishing a court at Chickasha is to be adopted it ought to be fitted into these terms in a more elaborate way than has been done by the Senator from Texas in his oral statement of his motion.

The PRESIDING OFFICER. The Chair has no right to put in an amendment on an oral statement.

Mr. BACON. I desire to say a word in regard to the proposed courts in the Indian Territory. If I recollect aright, there was a bill pending at the last session of Congress which disclosed a very great rivalry among a large number of communities in the Indian Territory, each of which was desirous to have a court located, in order that it might have the benefit of it if there was a State created. My recollection is that that bill was adversely recommended by the Judiciary Committee. I may be mistaken about that, but it certainly disclosed the fact that there were a dozen or more places in the Territory each of which desired to have a court. I do not think any of them ought to be established prior to the time when the State can determine for itself where they shall be located.

The PRESIDING OFFICER. Will the Senator from Texas put his amendment in proper shape? It is not in order as stated, except that it was accepted.

Mr. BAILEY. I was going to state it. On page 17, in line 6, after the word "Ardmore," insert "and one term at Chickasha."

Mr. BEVERIDGE. I accept it.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. BEVERIDGE. That is accomplished, Mr. President.

Mr. LONG. I ask unanimous consent for the adoption of the amendment I send to the desk, and I call the attention of the Senator from Indiana to it.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 15, line 3, after the word "appraisers," insert:

Who shall be nonresidents of the county wherein the land is situated.

Mr. BEVERIDGE. That amendment is manifestly just and right. It is accepted.

The amendment was agreed to.

Mr. BAILEY. In order to conform to the amendment agreed to a moment ago, on line 19, page 17, after the word "January," I move to insert "and at Chickasha on the first Monday in March."

It reads:

The regular term of said courts shall be held at the places designated in this act at Muscogee on the first Monday in January.

After "January," I move to add "at Chickasha on the first Monday in March."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. McLAURIN. I offer an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 2, line 3, after the word "unextinguished," strike out the remainder of the section, in the following words:

Or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this act had never passed.

Mr. McLAURIN. To make the amendment understood, I will read the proviso.

Mr. BEVERIDGE. Before the Senator explains it, I ask that the words be read again. My attention was called away.

The Secretary again read the words proposed to be stricken out.

Mr. BEVERIDGE. Is it merely to strike out the words?

The PRESIDING OFFICER. That is the amendment.

Mr. McLAURIN. To make it understood, I will read the first part of the proviso in connection with the part I propose to strike out.

Mr. BEVERIDGE. I wish to call the attention of the Senator from Minnesota [Mr. NELSON] to this amendment.

Mr. McLAURIN. The proviso reads as follows:

*Provided*, That nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this act had never passed.

Now, Mr. President, without the passage of this act the Territory of Oklahoma and Indian Territory, being under the jurisdiction of Congress, it is in the power of the Congress of the United States to make any law in reference to the Indians that it could make in reference to the white people or all the other inhabitants of those Territories. These Indians are made citizens of that State, they are made voters; they are permitted to participate in the government of the State. Section 2 reads:

That all male persons over the age of 21 years, who are citizens of the United States, or who are members of any Indian nation or tribe in said Indian Territory and Oklahoma, and who have resided within the limits of said proposed State for at least six months next preceding the election, are hereby authorized to vote for and choose delegates to form a constitutional convention for said proposed State.

The bill proposes as to a part of the citizens of this State, who are permitted to participate in the government of the State, to hold them yet in a chrysalis condition. The act proposes to allow Congress to legislate in respect not only to the persons but to the property of these citizens of the State, who are as much entitled to participate in the government of the people of the State as are those of the Caucasian race.

I do not think there ought to be a provision in this measure which would enable Congress to pass laws for the police regulation of a part of the inhabitants of the proposed State and not apply the same legislation to the others; in other words, to admit the State provided that a portion of the inhabitants of that State, who are citizens participating in the government of the State shall remain under the jurisdiction of the United States as a Territory.

Mr. STEWART. I move to lay the amendment on the table.

The motion was agreed to.

Mr. SPOONER. Mr. President, I give notice that I shall ask in the Senate for a separate vote on the amendment offered by the Senator from California [Mr. BARD].

Mr. STONE. I desire to offer an amendment.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. After section 12 insert as an additional section the following:

SEC. 13. That all restrictions upon the alienation of allotted lands in Oklahoma and the Indian Territory, except so far as such restrictions apply to the homestead of the allottees and to the full-blood Indians, shall cease upon the admission of such State into the Union. Any land selected as a homestead by an allottee from his or her allotted lands in said Territories while held by the allottee as such homestead shall be nontaxable for a period of twenty-one years from date of the admission of said State. All allotted lands in said Territories, other than homesteads, shall be taxable after the admission of said State in like manner as other property therein.

Mr. STEWART. I move to lay the amendment on the table.

The motion was agreed to.

Mr. BERRY. On page 6, at the end of line 12, I move to insert, after the word "schools:"

*And provided further*, That this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Arkansas. [Putting the question.] The noes seem to have it.

Mr. BERRY. I shall have to call for the yeas and nays. I will state, however, before that is done, that the language of the bill is:

That provision shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control, etc.

There are a good many of us on this side who think that that might be construed, inasmuch as it is open to all the children, to be a requirement that all these schools shall be open to any and all children. The amendment I propose simply says it shall not be construed to prevent the establishment of separate schools. I think they ought to have that right. It is a right exercised by every State, and will make it clear beyond question. There ought to be no question about it.

Mr. PLATT of Connecticut. I ask for the reading of the amendment.

The PRESIDING OFFICER. The amendment will be read.

The SECRETARY. On page 6, line 12, after the words "public schools," insert:

*And provided further*, That this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

Mr. PLATT of Connecticut. I think it is entirely unnecessary.

Mr. BERRY. It can do no harm, then, if it is unnecessary, and I trust the Senator will let it go in.

Mr. NELSON. I think there ought to be no objection to the amendment. I shall be glad to see it go in. It leaves it entirely optional with the State government whether they shall have separate colored schools or not.

Mr. PLATT of Connecticut. Does not the Senator think it is now optional?

Mr. NELSON. I think it is. But if it is, it can do no harm. I trust the amendment will be adopted.

Mr. BERRY. I ask the Chair to put the question again.

The PRESIDING OFFICER. The Chair will again state the question. The question is on agreeing to the amendment proposed by the Senator from Arkansas [Mr. BERRY].

The amendment was agreed to.

The PRESIDENT pro tempore. Are there further amendments? If not, the bill will be reported to the Senate.

Mr. HEYBURN. I desire to offer an amendment to come in on page 17, line 6. After the word "Ardmore," I move to insert the words "and one term at Durant." The people of that section of the Territory, this being a place of about 10,000, and from 75 to 100 miles from any other section, desire that this amendment shall be inserted in the bill, and I offer it at their request.

The PRESIDENT pro tempore. The amendment of the Senator from Idaho will be stated.

The SECRETARY. On page 17, line 6, after the word "Ardmore," insert the words "and one term at Durant."

Mr. BEVERIDGE. Mr. President, I trust we have now come to an end of the establishment of courts at various portions of the proposed new State. If this matter is to be continued there will hardly be a county seat of respectable size in the entire proposed new State that will not have, particularly and especially for the purposes of local booming, the establishment of a Federal court. There are, in my judgment, far too many Federal courts in this new State.

I have been opposed to all but two in each Territory, but the

exigencies of the situation seemed to require that the additional number should be added. Finally, when the Senator from Texas [Mr. BAILEY] suggested that an additional court should be had at Chickasha, and explained the reasons for it, I felt that perhaps in view of the fact we had already exceeded the limit of all wise legislation upon that subject we should not stop with the Senator from Texas asking for a court at Chickasha for that portion of the Indian Territory which surrounds it. But, Mr. President, I think it was universally understood in the Senate at that time that that was to be the end of Federal courts at the various towns in this new State. Certainly it ought to be. Otherwise we must go on until we will have a flood of Federal courts and a multitude of Federal buildings scattered all over the Commonwealth. It does not appeal, I think, to the sense of justice or the judgment of the Senate, or a proper distribution of the court machinery there, and I hope the amendment will not be adopted.

Mr. HEYBURN. Mr. President——

Mr. BEVERIDGE. I think the Senator has spoken once.

Mr. HEYBURN. I have not spoken. I merely explained the circumstances under which I offered the amendment. I have but a word to say, if I may do so.

The PRESIDENT pro tempore. Under the unanimous-consent agreement the Senator has no right to be heard a second time. ["Vote!" "Vote!"] The question is on agreeing to the amendment of the Senator from Idaho [Mr. HEYBURN].

The amendment was rejected.

The PRESIDENT pro tempore. There being no further amendments, the bill will be reported to the Senate.

The bill was reported to the Senate as amended.

The PRESIDENT pro tempore. Does any Senator desire to reserve a separate vote on any amendment?

Mr. SPOONER. I reserved for a separate vote in the Senate the amendment offered by the Senator from California [Mr. BARD], striking from the bill the Territory of Arizona and admitting New Mexico as a State.

Mr. FORAKER. I did not understand what the Senator from Wisconsin said.

Mr. SPOONER. I reserved for a separate vote the amendment of the Senator from California.

Mr. DUBOIS. In view of the statement made by the Senator from Wisconsin, I think it is in order, and, if so, I now desire to offer an amendment to the part of the bill proposed to be stricken out by the amendment of the Senator from California.

The PRESIDENT pro tempore. That is entirely in order.

Mr. DUBOIS. I offer an amendment to come in on page 25, after line 18.

The PRESIDENT pro tempore. The Senator from Idaho offers an amendment, which will be stated.

The SECRETARY. On page 25, after the word "prohibited," it is proposed to insert:

Congress reserves to itself the right to legislate on the subject of polygamy and polygamous cohabitation within said State; but the legislature of the State shall have the right to enact legislation in respect thereof which shall be effective unless and until Congress shall legislate in respect thereto.

Mr. DUBOIS. Mr. President, I desire to say——

Mr. PLATT of Connecticut. Mr. President, I do not understand parliamentary rules as well as a good many other Senators, but I wish to make an inquiry. This bill has been considered as in Committee of the Whole and has been amended. Now it comes to the Senate, and the question is, Will the Senate concur in the amendments made as in Committee of the Whole? Is not that the first question?

The PRESIDENT pro tempore. It is not, because the amendment of the Senator from California [Mr. BARD] was to strike out and insert, and there is still preserved the right on the part of any Senator to move an amendment to the part which is proposed to be stricken out. The question now is on the amendment proposed by the Senator from Idaho [Mr. DUBOIS]. [Putting the question.] The noes have it, and the amendment is rejected.

Mr. DUBOIS. Mr. President, is not debate on this amendment allowed?

The PRESIDENT pro tempore. The Chair did not intend to cut off any debate.

Mr. DUBOIS. I had the floor, Mr. President.

The PRESIDENT pro tempore. The Chair will consider the question on the adoption of the amendment an open one.

Mr. DUBOIS. I had not yielded the floor, Mr. President, when the Senator from Connecticut [Mr. PLATT] took it.

Mr. PLATT of Connecticut. I beg the Senator's pardon. I did not understand he desired to speak in support of his amendment.

Mr. DUBOIS. Mr. President, I offer an amendment to the Arizona and New Mexico portion of the bill, because I fear this evil in a joint State. I should not have much fear of it in the State of New Mexico, but I have offered the amendment including polygamy and polygamous cohabitation, and have done that designedly.

I desire Senators to remember now, as in the future, that the prohibition of polygamy amounts practically to nothing; that it is polygamous cohabitation which must be reached. During all the trials under the Edmunds Act, when hundreds and hundreds of Mormons were sent to prison for violating the laws of the land, there were only three or four sent to the penitentiary for the crime of polygamy. The convictions were for polygamous cohabitation—that is, for a man holding out to the world more than one woman as his wife. I hope the Senate will adopt this amendment, which reserves to Congress the right to legislate in this proposed State unless the new State itself legislates on the subject. I can see no reason why this amendment should not be adopted.

Mr. PLATT of Connecticut. Mr. President, may that amendment be stated? I desire to have the amendment which the Senator proposes stated, and then to have the clause read as it will stand if that amendment be adopted.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Idaho will be again stated.

The Secretary again read the amendment.

Mr. PLATT of Connecticut. I now understand how the clause will read if the amendment be adopted.

Mr. BERRY. I want to ask is that an amendment to the original bill or an amendment to the amendment proposed by the Senator from California [Mr. BARD]?

The PRESIDENT pro tempore. It is an amendment proposed to that portion of the original bill which the amendment of the Senator from California proposes to strike out.

Mr. BERRY. Then it is an amendment to the original bill.

The PRESIDENT pro tempore. An amendment to the original bill. The question is on the amendment. [Putting the question.] The "noes" have it; and the amendment is rejected.

Mr. DUBOIS. I call for the yeas and nays on the amendment, Mr. President.

The yeas and nays were not ordered.

The PRESIDENT pro tempore. Will the Senate concur in the amendments reported from the Committee of the Whole to the Senate, with the exception of the one on which a separate vote has been reserved?

The amendments not reserved were concurred in.

Mr. KEARNS. Mr. President, I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Utah will be stated.

The SECRETARY. In section 18, on page 22, at the end of line 11, it is proposed to insert the following:

*Provided*, That, the State of Utah consenting thereto, that portion of Arizona Territory lying north and west of the center of the Colorado River shall be annexed to and form a part of said State of Utah.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Utah.

Mr. KEARNS. Mr. President, the amendment to which I desire to call the attention of the Senate is for the purpose of annexing to the State of Utah that portion of Arizona called "the Arizona strip," lying north and west of the Grand River. There are several reasons why that strip should become a part of the State of Utah. One is that the few hundred inhabitants therein are isolated from the capital of their own Territory. Senators who have had the opportunity of visiting the Grand Canyon of the Colorado know how impossible it is to cross that Grand Canyon. The Grand Canyon at the place where it intersects the southern line of Utah and the northern line of Arizona is from 2,500 to 4,000 feet deep—a box canyon. Throughout the whole distance of that river there is only one ford or means of crossing. That makes it necessary for the inhabitants living on this strip to go to Los Angeles so as to reach the capital of Arizona or to pass around to Pueblo, Colo., to reach there. They have to travel a thousand miles to get to their own capital.

Mr. BEVERIDGE. I will ask the Senator how much of this territory there is and what is the character of it?

Mr. KEARNS. It embraces about 7,000 square miles.

Mr. BEVERIDGE. It does not include the Grand Canyon itself?

Mr. KEARNS. It does not.

Mr. BEVERIDGE. It leaves that for Arizona?

Mr. KEARNS. Yes. All the commercial interests of the strip belong to citizens of Utah. It is very limited. There are no producing mines and no very valuable taxable property there. It is very difficult for the Territory of Arizona to enforce its criminal laws there. In fact, it is unable to do so.

On the other hand, Arizona affords a refuge to criminals who steal cattle or stock or commit other depredations in Utah. They pass over into the strip which is called "the Arizona strip," and before we can get a requisition for their arrest from the governor of Arizona they pass down to California or into the State of Colorado, which makes the enforcement of the law extremely difficult.

For these reasons, Mr. President, and others which I might state but for the lateness of the hour, I trust the Senate will adopt the amendment.

Mr. BEVERIDGE. Mr. President, it seems, upon the statement which has been made by the Senator from Utah [Mr. KEARNS], that this is a very just amendment, since it is a measure which injures no one and deprives no one of any right, but, upon the contrary, is a measure purely in the interest of justice, so that the criminals from both the State of Utah and the Territory of Arizona may be apprehended, and this strip of land, which is of such a bad character, as described by the Senator, shall no longer be a refuge for lawbreakers. So I accept the amendment on behalf of the committee.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Utah.

Mr. BAILEY. Before that trade is consummated, I want the yeas and nays.

The PRESIDENT pro tempore. The Chair did not understand the Senator from Texas.

Mr. BAILEY. The Senator from Texas did not exactly intend the Chair to understand him, but having said it, I will repeat. Before that trade is consummated, I want the yeas and nays.

The PRESIDENT pro tempore. That is what the Chair wished to understand—whether the Senator demanded the yeas and nays.

The yeas and nays were ordered.

Mr. BEVERIDGE. Mr. President, with reference to that amendment, I wish to say that it was proposed to the Committee on Territories. It was proposed and offered by the Senator from Utah [Mr. KEARNS] in the early stages of this discussion. The Senator from Texas [Mr. BAILEY] perhaps did not know that fact. The amendment has been printed and laid on the tables of Senators.

The Secretary proceeded to call the roll.

Mr. HOPKINS (when his name was called). I transfer the pair I had with the senior Senator from Alabama [Mr. MORGAN] to the senior Senator from New York [Mr. PLATT], and vote. I vote "yea."

Mr. McLAURIN (when Mr. MONEY's name was called). My colleague [Mr. MONEY] is paired with the senior Senator from Wyoming [Mr. WARREN].

The roll call was concluded.

Mr. BACON. I again announce my pair with the junior Senator from Rhode Island [Mr. WETMORE], who is detained from the Chamber by illness.

Mr. CLARK of Wyoming. My colleague [Mr. WARREN], who was called from the Chamber some time ago, wished me to announce his pair with the Senator from Mississippi [Mr. MONEY] if a roll call should be had.

Mr. GORMAN. I was requested by the senior Senator from Alabama [Mr. MORGAN] to announce that he is paired with the junior Senator from Illinois [Mr. HOPKINS] for the day. I desire to call the attention of that Senator to the fact that the Senator from Alabama is now absent.

Mr. HOPKINS. I will state to the Senator from Maryland that I transferred my pair with the Senator from Alabama [Mr. MORGAN] to the senior Senator from New York [Mr. PLATT], who had been here all afternoon, but left about the same time the Senator from Alabama did.

Mr. GORMAN. I will say to the Senator from Illinois that I understood from the Senator from Alabama, as we all did on this side, that it was a specific pair with the Senator from Illinois, and not to be transferred.

Mr. HOPKINS. I take the responsibility of doing what I have done.

Mr. GORMAN. I recognize the Senator's right to do so.

The result was announced—yeas 38, nays 33, as follows:

YEAS—38.

| | | | |
|---|---|---|---|
| Allee | Depew | Gamble | Penrose |
| Allison | Dick | Hale | Platt, Conn. |
| Ankeny | Dietrich | Hopkins | Proctor |
| Ball | Dillingham | Kean | Quarles |
| Beveridge | Dolliver | Kearns | Scott |
| Burnham | Dryden | Kittredge | Smoot |
| Burrows | Fairbanks | Lodge | Spooner |
| Clapp | Foster, Wash. | Long | Stewart |
| Clark, Wyo. | Frye | Millard | |
| Cullom | Fulton | Nelson | |

NAYS—33.

| | | | |
|---|---|---|---|
| Alger | Clay | Hansbrough | Patterson |
| Bailey | Cockrell | Heyburn | Perkins |
| Bard | Daniel | McComas | Simmons |
| Bate | Dubois | McCreary | Stone |
| Berry | Foraker | McCumber | Taliaferro |
| Blackburn | Foster, La. | McEnery | Teller |
| Carmack | Gallinger | McLaurin | |
| Clark, Mont. | Gibson | Mallory | |
| Clarke, Ark. | Gorman | Martin | |

NOT VOTING—19.

| | | | |
|---|---|---|---|
| Aldrich | Elkins | Money | Platt, N. Y. |
| Bacon | Hawley | Morgan | Tillman |
| Burton | Knox | Newlands | Warren |
| Crane | Latimer | Overman | Wetmore |
| Culberson | Mitchell | Pettus | |

So the amendment of Mr. KEARNS was agreed to.

The PRESIDENT pro tempore. The question before the Senate now is on the amendment offered by the Senator from California [Mr. BARD].

Mr. BEVERIDGE. On that I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. PERKINS. Before the roll is called, I desire to state that when this bill was under consideration in Committee of the Whole, and after I had voted, I received a note from the Senator from Pennsylvania [Mr. KNOX] stating that he was opposed to the Bard amendment, and was ill at home, and desired me to pair with him upon that vote. This note was received after I had voted. Had I received the message prior to that time, Senatorial courtesy would have prompted me to pair with the Senator.

Having already voted upon the amendment when in Committee of the Whole, and it now being in the Senate, I can not with propriety pair with the Senator from Pennsylvania. Otherwise I should be glad to do so, had I received his note before committing myself by my vote.

The PRESIDENT pro tempore. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. BACON (when his name was called). I again announce my pair with the junior Senator from Rhode Island [Mr. WETMORE], who has been called away by illness. If he were present, he would vote "nay," and I should vote "yea."

Mr. McLAURIN (when Mr. MONEY's name was called). I wish to state that my colleague [Mr. MONEY] is paired with the Senator from Wyoming [Mr. WARREN]. If my colleague were present, he would vote "yea."

The roll call was concluded.

Mr. CLARK of Wyoming. My colleague [Mr. WARREN] is unavoidably detained from the Chamber, and is paired with the Senator from Mississippi [Mr. MONEY].

The result was announced—yeas 38, nays 38, as follows:

YEAS—38.

| | | | |
|---|---|---|---|
| Alger | Culberson | Heyburn | Patterson |
| Bailey | Daniel | Latimer | Penrose |
| Bard | Dubois | McCreary | Perkins |
| Bate | Elkins | McCumber | Simmons |
| Berry | Foraker | McEnery | Stewart |
| Blackburn | Foster, La. | McLaurin | Stone |
| Carmack | Gallinger | Mallory | Taliaferro |
| Clark, Mont. | Gibson | Martin | Teller |
| Clay | Gorman | Newlands | |
| Cockrell | Hansbrough | Overman | |

NAYS—38.

| | | | |
|---|---|---|---|
| Allee | Cullom | Fulton | Millard |
| Allison | Depew, | Gamble | Nelson |
| Ankeny | Dick | Hale | Platt, Conn. |
| Ball | Dietrich | Hopkins | Proctor |
| Beveridge | Dillingham | Kean | Quarles |
| Burnham | Dolliver | Kearns | Scott |
| Burrows | Dryden | Kittredge | Smoot |
| Clapp | Fairbanks | Lodge | Spooner |
| Clark, Wyo. | Foster, Wash. | Long | |
| Clarke, Ark. | Frye | McComas | |

NOT VOTING—14.

| | | | |
|---|---|---|---|
| Aldrich | Hawley | Morgan | Warren |
| Bacon | Knox | Pettus | Wetmore |
| Burton | Mitchell | Platt, N. Y. | |
| Crane | Money | Tillman | |

So the Senate refused to concur in the amendment made as in Committee of the Whole.

Mr. BACON. I move to strike out all of the bill, beginning in section 19 and extending to section 37.

Mr. President, I will state to the Senate that the amendment which I propose strikes out everything in the bill relating to New Mexico and Arizona, and if it should be adopted and the bill passed after the adoption of such an amendment it would result in the admission of Oklahoma and the Indian Territory as one State, and that would be the entire scope and effect of the bill.

I desire to say that I think the argument of Senators on the opposite side, who have most strenuously contended that New Mexico was unfit for statehood, if followed to its legitimate and

logical end, must result in the corresponding conclusion that the two together ought not to be admitted.

If it be said that Arizona is no more worthy of admission than is New Mexico, then the extension of the area and the doubling of the population do not meet the objection. If, on the other hand, it is said that New Mexico, by reason of its peculiar population, is unfit to be admitted to statehood, the argument can not be answered that it is a monstrous iniquity under such circumstances to tie Arizona to New Mexico and admit them as one State.

Mr. President, while I am presenting this view of it, I desire to call the attention of the Senate to the very earnest appeal made by the Senator from Indiana [Mr. BEVERIDGE], in charge of this bill, against a separation of the two Territories—Indian Territory and Oklahoma—upon the ground that it was the earnest wish of those two Territories to be consolidated in one State; and the Senator appealed to the Senate, not only earnestly, but passionately, not to disregard the express wish of these two Territories.

Mr. President, there is no Senator here, however earnest he may be in the advocacy of the proposition that one State be made of the two Territories of New Mexico and Arizona, who will say there is any evidence upon which the Senate could confidently proceed that it is the desire, either of the people of Arizona or of New Mexico, that they should be united in one State.

Therefore the passionate argument of the Senator from Indiana against a separation of Oklahoma and the Indian Territory into two States applies with equal force and logic to the contention that New Mexico and Arizona should not, against the expressed and avowed wish of the people of each of those Territories, be included in the same State.

Therefore, Mr. President, while some of us have voted for the creation of New Mexico as a separate State, as that has been decided against by the Senate, and that by a tie vote, by every consideration, it seems to me, the Senate should equally decide that it will not, at this time, admit either one of them.

Mr. PLATT of Connecticut. I wish to say a word. If I understand the bill as it is now and without further amendment, it admits Oklahoma and the Indian Territory as one State. It admits New Mexico and Arizona as one State, provided that each, Arizona and New Mexico, shall vote separately to have it so admitted. It seems to me that if the people of the Territories of New Mexico and Arizona should vote that they wish to come in as one State they ought to have that privilege.

Mr. BACON. May I ask the Senator from Connecticut a question before he yields the floor?

Mr. PLATT of Connecticut. Certainly.

Mr. BACON. If the Senator agrees with the Senators who have argued with so much earnestness that the people of New Mexico are unfit for statehood, would the Senator say that that difficulty and objection would be cured by uniting New Mexico with Arizona and bringing them in as one State?

Mr. PLATT of Connecticut. I should say that if we give these Territories separately the right to say whether they wish to come in at this time as one State, it is a good provision to make. The people of either Territory can vote that they do not wish to come in, and then that ends it.

Mr. CARMACK. Mr. President, it seems to me the arguments which have been put forward here against the admission of New Mexico as a State are not arguments against the admission of New Mexico, but they do constitute a conclusive argument against the joining of New Mexico and Arizona.

The Senator from Wisconsin [Mr. SPOONER] referred to the fact that the people of New Mexico use interpreters in their court proceedings, in their Territorial legislature, and in their conventions. That will be just as true if they are joined with the Territory of Arizona as it would be if that Territory was admitted as a State. The people of New Mexico are not necessarily incapable of self-government or unfit for self-government by reason of the fact that they are of a different race from ours, or of a different blood from ours, or even because they do not speak the same language we do. But that does tend very strongly to incapacitate them for governing another people who are of our race and blood and do speak our language.

If the people of New Mexico are not fit to exercise the right of self-government, then they are not fit even to vote upon the question whether or not they shall be admitted to statehood with the Territory of Arizona.

Mr. SPOONER. I desire to say simply a word. I did not refer to the use of interpreters in court. That often happens in the courts of the United States. It happens in my own State. It happens in all other States. I referred to the fact that the statutes had to be printed in two languages, and that an interpreter had to be used, as this report shows, to interpret the charge of the court to the jury; that sometimes an interpreter had been admitted as a necessity to the jury room.

Mr. CARMACK. Will the Senator yield for a question?

Mr. SPOONER. Yes.

Mr. CARMACK. Would not that be true if New Mexico were admitted jointly with Arizona? Would not the same objection obtain? How would it obviate the difficulty to join the two Territories?

Mr. SPOONER. I simply rose to correct the Senator's statement.

Mr. HEYBURN. Mr. President, I have proceeded all along upon the theory that it was unfair to the people of the western section of this country to mortgage the future of so large an area by admitting it as one State. It is unfair from the standpoint of the people of that Territory. They could settle that by voting under the Foraker amendment. But it is unfair to the other sections of the country, and if it is true, as it has been urged, that the people of those two Territories are not equipped for statehood, then let them wait until they are equipped. My objection is based upon the element contained in this proposed legislation of a mortgage upon the future of those people. Suppose we concede at this period of the discussion that they are not equipped, that the grade of citizenship is not up to the standard, and that the development of the resources of the country is not up to the standard of statehood. If we have reached that point, and we seem to have reached it, then the logical conclusion is that those two geographical subdivisions of the United States should remain out of the Union until they are equipped for statehood.

Upon those grounds, and upon those grounds alone, at this stage of the consideration of the bill, I am bound to vote for the amendment as proposed at this time to leave these two Territories out of this measure.

Mr. PATTERSON. I should like to know whether it would be in order to offer an amendment to perfect the bill before the amendment which has been offered by the Senator from Georgia is voted upon?

The PRESIDENT pro tempore. To perfect that portion of the bill which the Senator from Georgia proposes to strike out?

Mr. PATTERSON. It perfects it, and also adds to the first part of the bill. I will send the amendment to the desk and ask that it be read.

The PRESIDENT pro tempore. It is entirely in order to move to amend that portion of the bill which the Senator from Georgia proposes to strike out.

Mr. PLATT of Connecticut. That portion of the amendment is undoubtedly in order.

The PRESIDENT pro tempore. That portion is in order.

Mr. LODGE. The other is out of order.

Mr. PLATT of Connecticut. But, as I understand, the amendment also refers to some other portion of the bill.

The PRESIDENT pro tempore. That part of the amendment will have to be offered as a separate amendment.

Mr. PATTERSON. Then I will offer the second part of the amendment as I have sent it to the desk, which amends the part I moved to have stricken out in line 16, page 23.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. In line 16, page 23, before the word "citizens," strike out the word "male."

Mr. PATTERSON. Mr. President, it pains me that the Senator from Indiana [Mr. BEVERIDGE], who, I believe, is in sympathy with this movement, should be inclined to smile audibly at this early stage of the discussion. The amendment as a whole was intended to strike out from that part of the bill in line 9, on page 2, section 2, the word "male," and from line 16, page 23, the word "male." If the amendment shall be adopted, it simply enlarges the voting population upon the question of the election of the constitutional conventions, and then upon the adoption or rejection of the constitution that may be framed.

I wish the Senate to understand that the amendment does not carry equal suffrage beyond the question of the constitution itself. It permits women of full age in the proposed two new States to vote for members of the constitutional conventions, and then after the constitution is adopted it will permit them to vote upon its ratification or rejection. The amendment does not create woman suffrage in the new States. That is a matter which will be left distinctly to the constitutional convention itself. As I suggested before, it simply proposes to allow women, with men, to vote for members of the constitutional conventions, and then to vote upon the ratification or rejection of such instrument as the conventions may adopt.

Who will say, Mr. President, that such a privilege should not be given to the women of these now four Territories? It is the crucial time for the future of these four Territories in con-

nection with the proposed statehood. The constitutional conventions will have everything with which women are most deeply concerned to consider—the question of divorces, the question of the right of parents to children, the question of the ownership of property by wives, the question of the right of wives to the proceeds of their own labor, and the question of schools. Who, Mr. President, is more deeply interested in these different questions than are the women of these now four Territories? Whatever may be said of the bravery, the courage, the self-sacrificing devotion, and the patriotism of those who left behind them the civilization and the comforts of their eastern homes, as applicable to the men, may be emphasized fivefold as applicable to the women.

Mr. President, this is in the line of the progress of civilization. We already have four States which give full suffrage to women. We have seventeen States which allow the women to vote at all school elections and for all school officers. The State of Kansas permits the women of that State to vote in all municipal elections and for all city officials; and at least four States in the Union permit their women to vote upon matters that affect certain kinds of taxation and appropriations for public works.

If that has been the progress upon the line of broadening suffrage, and if the revolution is still going forward, I ask honorable Senators why Congress should not say to the people who live in these Territories that the women in the Territories as well as the men shall vote for members of the constitutional conventions, that their influence may be directly felt in the creation of the constitutions under which it is expected that the people of these States will live practically forever?

It seems to me, Mr. President, that this is not unreasonable. As I suggested, it does not impose or secure equal or woman suffrage in these proposed new States. It simply gives to the women of the States a voice in the preparation of the constitution under which all must live, and in the rejection or the adoption of the constitution. The constitutional conventions will have the duty devolved upon them of determining what the quality of suffrage in these four proposed States shall be thereafter.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Colorado [Mr. PATTERSON].

The amendment was rejected.

The PRESIDENT pro tempore. If there be no further amendments, shall the amendments be engrossed and the bill be read a third time?

Mr. GORMAN. I understand that we have not voted on the amendment of the Senator from Georgia [Mr. BACON].

Mr. CULLOM. That is the amendment pending.

The PRESIDENT pro tempore. The Chair begs pardon of the Senate. The Chair had forgotten that the pending amendment is that offered by the Senator from Georgia. The question is on agreeing to that amendment.

Mr. GORMAN. I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. NEWLANDS. Mr. President, I wish to say a few words regarding the amendment. I understand the amendment to be to strike out all the portions of the bill relating to New Mexico and Arizona, leaving it a bill for the joint statehood of Oklahoma and the Indian Territory.

Now, Mr. President, I understand that the opposition to the separate statehood of New Mexico and Arizona is not based upon any desire to deny to the area of land covered by these two Territories and the population that will hereafter live there the right of a fair and proper representation in the Union of the United States. I understand the sole objection to the separate statehood of Arizona and New Mexico is that neither of those Territories has at present the population that entitles it to statehood, and that neither of them has the present resources so fully developed, so fully explored, so definitely ascertained as to give, as the Senator from Indiana has said, collaterals to the Union for future development—for a future increase in population and in wealth.

Now, then, if that be so, if that argument be made in all sincerity, surely the appeal should be listened to which suggests that the Government of the United States wait until the needed demonstration is made; that we should not prematurely force so large an area of land into one State; that we should not prematurely force the creation of so large a State upon the assumption that neither the existing population nor the existing wealth are sufficient to maintain statehood, and that there is no adequate assurance of sufficient population and wealth in the future.

I think there is some weight in the suggestion as to population; that whilst heretofore Territories having only 60,000 population have been admitted as States in the Union, and later on the test of population has been requiring a population equal to that required for Congressional representation—125,000 or 150,000—there is something in the statement that the 60,000 of years ago or the 150,000 of a later period bore a greater proportion to the population then existing in this country than the population existing in New Mexico or the population existing in Arizona, or the population existing in both, perhaps, bears to the present total population of the United States.

But if they have not got the requisite population to maintain what this Congress may regard as the present standard for statehood, if they have not the existing wealth that suits the views of Congress regarding the existing standard of statehood, it seems to me that the only fair and just thing to do is to allow each one of these Territories to remain in a Territorial condition until it has reached to or approximates the standard fixed by Congress, and not to force them into a Union to which they are repugnant, and not to force them to the unnecessary expense to which the procedure pointed out by this bill will subject them, in holding a constitutional convention and election.

The PRESIDENT pro tempore. The question is on agreeing to the amendment proposed by the Senator from Georgia [Mr. BACON]. On this question the yeas and nays have been ordered. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. McLAURIN (when Mr. MONEY's name was called). My colleague [Mr. MONEY] is paired with the senior Senator from Wyoming [Mr. WARREN]. If he were present, he would vote "yea."

The roll call having been concluded, the result was announced—yeas 39, nays 36, as follows:

YEAS—39.

| | | | |
|---|---|---|---|
| Alger | Cockrell | Hansbrough | Newlands |
| Bacon | Culberson | Heyburn | Overman |
| Bard | Daniel | Latimer | Patterson |
| Bate | Dubois | McCreary | Perkins |
| Berry | Elkins | McCumber | Simmons |
| Blackburn | Foraker | McEnery | Stewart |
| Burrows | Foster, La. | McLaurin | Stone |
| Carmack | Gallinger | Mallory | Taliaferro |
| Clark, Mont. | Gibson | Martin | Teller |
| Clay | Gorman | Morgan | |

NAYS—36.

| | | | |
|---|---|---|---|
| Allee | Depew | Fulton | McComas |
| Allison | Dick | Gamble | Millard |
| Ankeny | Dietrich | Hale | Nelson |
| Ball | Dillingham | Hopkins | Penrose |
| Beveridge | Dolliver | Kean | Platt, Conn. |
| Burnham | Dryden | Kearns | Proctor |
| Clapp | Fairbanks | Kittredge | Quarles |
| Clark, Wyo. | Foster, Wash. | Lodge | Smoot |
| Cullom | Frye | Long | Spooner |

NOT VOTING—15.

| | | | |
|---|---|---|---|
| Aldrich | Crane | Money | Tillman |
| Bailey | Hawley | Pettus | Warren |
| Burton | Knox | Platt, N. Y. | Wetmore |
| Clarke, Ark. | Mitchell | Scott | |

So Mr. BACON's amendment was agreed to.

Mr. BACON. Mr. President, am I recorded as voting on the last vote?

The PRESIDENT pro tempore. The Chair is informed that the Senator is recorded in the affirmative.

Mr. BACON. I voted inadvertently. I am paired with the junior Senator from Rhode Island [Mr. WETMORE], and I therefore ask leave to withdraw my vote.

The PRESIDENT pro tempore. Is there objection to the Senator from Georgia withdrawing his vote?

Mr. BACON. I voted inadvertently, without thinking for a moment of my pair.

The PRESIDENT pro tempore. The Chair hears no objection, and the vote of the Senator from Georgia is withdrawn.

Mr. BARD. Mr. President, I propose an amendment similar to the one I have heretofore offered relative to the admission of New Mexico, the principal change being the striking out of lines 3, 4, and 5, on page 6 of that amendment.

Mr. NELSON. That is practically the same amendment that we have already voted upon. I make the point of order that the amendment is not in order.

Mr. PLATT of Connecticut. Mr. President, I should like to be advised more particularly in what respect the amendment which has just been offered by the Senator from California [Mr. BARD] differs from the amendment which was adopted as in Committee of the Whole, in which the Senate refused to concur.

Mr. BARD. Mr. President——

Mr. MALLORY. Mr. President, we should like to hear what is the proposed amendment. I have not been able to hear it, and do not know what it is about.

Mr. PLATT of Connecticut. I suppose the amendment should be read.

The PRESIDENT pro tempore. The amendment seems to be precisely the same as that which has already been nonconcurred in by the Senate, with the exception, perhaps, of two or three lines.

Mr. BARD. It is, with the exception of striking out the words on the sixth page in lines 3, 4, and 5, as follows:

That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

Mr. PLATT of Connecticut. I submit, Mr. President, that that does not make the amendment in order, and that it is merely a substitute, so to speak.

Mr. BARD. Mr. President, the amendment which I offered before was offered as in Committee of the Whole, and I think it makes a difference, the bill now being in the Senate.

Mr. LODGE. But we took a vote on that amendment in the Senate.

The PRESIDENT pro tempore. There was a vote in the Senate on the question of concurring in that amendment, which had been favorably reported from the Committee of the Whole to the Senate, and then in the Senate there was a refusal to concur in the amendment. Now, practically, this is precisely the same amendment, with the exception of two or three lines.

Mr. ELKINS. It is very important, and is another amendment altogether.

Mr. FORAKER. Mr. President, I know nothing about this amendment, except only as it has just now been explained. I did not know the Senator from California intended to offer it, but, as I understand, as the amendment has been explained, it is an amendment that does differ from the one upon which we voted; and it does differ, it seems to me, as to a very material matter—if it was proper to have that matter in the bill at all—relating to the question of suffrage, striking it from the covenant which we require the States to make. I should like a ruling on it.

Mr. NELSON. I desire to say, in reply to the Senator from Ohio [Mr. FORAKER], that the Senator from Texas [Mr. BAILEY] the other day argued that those words were merely surplusage; that it was a matter contained in the fifteenth amendment. It is practically the same thing we have voted upon, and therefore it is not in order.

Mr. FORAKER. It may be that it is merely surplusage. I think there is a good deal in that proposition. The Senate, however, did not accept that view of it. The Senate kept it in the bill after voting on it. It seems to me that the striking out of the words suggested by the Senator from California makes it a different amendment.

Mr. GORMAN. Mr. President, I think that the rule is perfectly clear. This amendment was offered when the Senate was acting as in Committee of the Whole, voted upon, and adopted. It was reserved for a separate vote when the bill was reported to the Senate, and by a tie vote it was lost. Now the distinguished Senator from California [Mr. BARD] has changed his amendment, and under the rule, no matter how slight the change may be, that change having been made, it is unquestionably, and it has always been so held, that a Senator has the right to have a vote in the Senate upon such a proposition. That right is so sacred to every Senator and to the Senate itself that I trust there will not be the slighest hesitation on the part of the Senate in performing its duty. I am sure I am perfectly accurate when I say that such has been the universal rule of the Senate.

The PRESIDENT pro tempore. The Senator from California must satisfy the Chair that he has changed the amendment. The Chair does not see from the reading of it and from merely looking at it that there are changes. If the Senator from California will state what the changes are which will make the amendment in order, the Chair will then rule.

Mr. BARD. Mr. President, I have already stated——

The PRESIDENT pro tempore. The Chair could not hear the Senator.

Mr. BARD. I have already stated and explained the alteration referred to, which is the striking out of three lines of the 5th clause, on page 6, of the amendment I offered—lines 2, 3, 4, and 5, which read as follows:

That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

Those are the words I propose to strike out.

The PRESIDENT pro tempore. What other change has the Senator made?

Mr. BARD. None other.

Mr. SPOONER. I should like to inquire to what section of the bill the amendment proposed by the Senator from California applies?

The PRESIDENT pro tempore. Commencing with section 19 and including the remainder of the bill.

Mr. BEVERIDGE. It is to strike out.

The PRESIDENT pro tempore. The Chair will rule the amendment is in order.

Mr. BLACKBURN. On that amendment I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary called the name of Mr. ALDRICH.

Mr. MALLORY. Mr. President, a great many of us over here have not any idea what this amendment is, and we should like to have it read at the desk.

The PRESIDENT pro tempore. The yeas and nays have been ordered, and the first name on the roll has been called. The Senator is too late.

The Secretary resumed the call of the roll.

Mr. BACON (when his name was called). I again announce my pair with the junior Senator from Rhode Island [Mr. WETMORE].

The roll call was concluded.

Mr. BEVERIDGE. Mr. President——

Mr. COCKRELL. Let the vote be announced.

Mr. BEVERIDGE. I desire to change my vote. I should like my name to be again called.

The Secretary called the name of Mr. BEVERIDGE.

Mr. BEVERIDGE. I change my vote from "nay" to "yea."

The result was announced—yeas 40, nays 37, as follows:

YEAS—40.

| | | | |
|---|---|---|---|
| Alger | Cockrell | Hansbrough | Newlands |
| Bailey | Culberson | Heyburn | Overman |
| Bard | Daniel | Latimer | Patterson |
| Bate | Dubois | McCreary | Penrose |
| Beveridge | Elkins | McCumber | Perkins |
| Berry | Foraker | McEnery | Simmons |
| Blackburn | Foster, La. | McLaurin | Stewart |
| Carmack | Gallinger | Mallory | Stone |
| Clark, Mont. | Gibson | Martin | Taliaferro |
| Clay | Gorman | Morgan | Teller |

NAYS—37.

| | | | |
|---|---|---|---|
| Allee | Depew | Gamble | Nelson |
| Allison | Dick | Hale | Platt, Conn. |
| Ankeny | Dietrich | Hopkins | Proctor |
| Ball | Dillingham | Kean | Quarles |
| Burnham | Dolliver | Kearns | Scott |
| Burrows | Dryden | Kittredge | Smoot |
| Clapp | Fairbanks | Lodge | Spooner |
| Clark, Wyo. | Foster, Wash. | Long | |
| Clarke, Ark. | Frye | McComas | |
| Cullom | Fulton | Millard | |

NOT VOTING—13.

| | | | |
|---|---|---|---|
| Aldrich | Hawley | Pettus | Wetmore |
| Bacon | Knox | Platt, N. Y. | |
| Burton | Mitchell | Tillman | |
| Crane | Money | Warren | |

So the amendment of Mr. BARD was agreed to.

Mr. BEVERIDGE. I move to reconsider the vote by which the amendment was agreed to.

Mr. GORMAN. I move to lay that motion on the table.

Mr. FORAKER. I rise to a parliamentary inquiry. Has a Senator the right to change his vote on the roll call unless he states he has voted under a misapprehension?

The PRESIDENT pro tempore. He has a right to change his vote at any time before the result is announced.

Mr. FORAKER. I merely make the inquiry.

Mr. GORMAN. I move to lay the motion of the Senator from Indiana on the table.

The PRESIDENT pro tempore. The Senator from Indiana [Mr. BEVERIDGE] moves to reconsider the vote by which the amendment of the Senator from California [Mr. BARD] was agreed to.

Mr. GORMAN. I move to lay that motion on the table.

Mr. SPOONER. The Senator from Indiana has the floor.

Mr. BEVERIDGE. I have not yielded the floor, Mr. President.

Mr. GORMAN. I beg pardon. I did not know that. Then I withdraw my motion, of course.

Mr. BEVERIDGE. Mr. President, I had not intended to say anything more——

Mr. ELKINS. I do not think debate is in order.

Mr. BEVERIDGE. Yes; it is.

The PRESIDENT pro tempore. The Senator from Indiana is recognized.

Mr. BEVERIDGE. Mr. President, when the vote was originally called for upon the amendment of the Senator from California I had intended to address the Senate under the ten-minute rule. As chairman of the committee, I thought that an appropriate thing to do; but at the moment the vote was

called for I had been summoned into the Marble Room and was not able to return until I heard the ringing of the bell which announced the beginning of the vote. It was said in the beginning of this matter that no one would question the propriety of the committee, or some Senator in its behalf, closing the debate under the ten-minute rule in reply to the Senator from California.

Mr. President, there has been a long and interesting session, but I think no incident of it, perhaps, was more interesting than the fact that the Senator from California should offer this amendment. When he did offer it, Mr. President, much to my surprise, I sent to the document room for the interesting speech which the Senator from California, then in accord with his colleagues in this Chamber, made two years ago in opposition to the admission of both New Mexico and Arizona. If time permitted I should like to read that speech and confront the Senator from California now with what he then said. At that time he was against the admission of both of these Territories. At that time he said that neither had sufficient population. At that time he pointed out the appalling figures with respect to illiteracy. At that time he showed that there were none of the elements of statehood in either of them taken separately. Two years have passed. That speech was made after careful preparation. There has been no change in those Territories. Why has there been a change in the Senator from California?

Mr. FORAKER. Mr. President——

Mr. BEVERIDGE. The Senator from California——

The PRESIDENT pro tempore. Does the Senator from Indiana yield to the Senator from Ohio?

Mr. FORAKER. I will not interrupt the Senator. I merely would like to know whether there has not been a change also in the Senator from Indiana?

Mr. BEVERIDGE. I hope there has, and for the better. So far as concerns a change in the Senator from Indiana, I never announced myself as against the proposition which seems to commend itself even to the judgment of the Senator from Ohio, if he were permitted to vote his judgment, for the union of these two Territories, if a majority in each of them, voting separately, said it was the desire of the two Territories to be joined.

We have heard an eloquent speech from the Senator from Ohio [Mr. FORAKER]. We have heard eloquent speeches from other Senators upon this side of the Chamber——

Mr. FORAKER. The Senator will allow me to interrupt him for a minute?

Mr. BEVERIDGE. Certainly.

Mr. FORAKER. I stated in the speech to which the Senator referred that I should dislike exceedingly to see the two Territories joined even if they should vote in favor of such a joining. I was opposed to it as unwise and impolitic, even in that event.

Mr. BEVERIDGE. Ah, it comes back to the old proposition that not even the people of the Territories are themselves to be permitted to say what they would like their destiny to be. Gentlemen are not willing for this question to go to the ballot box. They are not willing for the people themselves to say at the ballot box what they want, even when voting separately.

The Senator from Michigan [Mr. ALGER] yesterday addressed me, and I asked him the question, "Are you willing to vote to have these Territories come in as they vote separately?" He answered that he was. I asked him if that was his position. He answered it was; and I contrast what he said yesterday with his votes to-day.

Mr. President, it is a serious business in which we are dealing. I have never yet been able to see why it was that Senators were not willing to take the voice of the people. I have never been able to see why it was that they were willing to insist that gentlemen who want to fill offices, State and national, in those two Territories, should represent the people's wishes rather than the people themselves. I call the attention of Senators on both sides of the Chamber to what you are voting for in this matter, if you vote to keep out those two Territories. You are voting to prevent the people themselves from saying whether they shall be joined again as they were once joined.

But not content with that, not content with striking out the whole matter, which was the original proposition of the Senator from California, not content with adopting the suggestion of the Senator from Ohio, the Senator from California now proposes to go back on his record of two years ago and negative the words that he then so carefully prepared by agreement with his colleagues upon the majority of the committee, and to bring in New Mexico alone.

Mr. President, there is no use detaining the Senate upon the question of New Mexico's present incapacity for statehood by itself. One hundred and twenty thousand Mexicans, most of them Spanish speaking—excellent people, no doubt—out of a population which at most does not number 200,000. And how long a time has it taken that population to accumulate there? Fifty-six years? No; it has been in the Union fifty-six years, but it has been settled since the sixteenth century.

Mr. President, why is it that it has not become more densely populated, and with Americans, even since it was taken into the Union? It is on account of an absence of those elements which sustain human life—water, soil, etc. During the same period the great tide of American immigration has swept over our Northwest to the Pacific Ocean; it has swept over our Middle West to the Golden Gate. Everywhere the hosts of immigration have gone, and we have seen a continent conquered peaceably by the settler, the pioneer, the smoke arising from whose cabin was his pillar of cloud by day.

Mr. President, that column of peaceful invasion did not strike New Mexico, it did not strike Arizona, simply because there was not enough water there.

The PRESIDENT pro tempore rapped with his gavel.

Mr. BEVERIDGE. It was not on account of——

The PRESIDENT pro tempore. The time of the Senator from Indiana has expired.

Mr. FORAKER. I move to lay on the table the motion to reconsider.

Mr. ALLISON. I rise to a question of order. What would be the effect of the motion of the Senator from Ohio if it prevailed?

The PRESIDENT pro tempore. If the motion to reconsider is laid on the table it is a final disposition of the vote.

Mr. ALLISON. A final disposition?

The PRESIDENT pro tempore. A final dispositon of the vote if the motion to lay on the table prevails. The question is on agreeing to the motion to lay on the table.

Mr. BEVERIDGE. On that I demand the yeas and nays.

The yeas and nay were ordered; and the Secretary proceeded to call the roll.

Mr. BACON (when his name was called). I again announce my pair with the Senator from Rhode Island [Mr. WETMORE].

The roll call was concluded.

Mr. BEVERIDGE. I ask for a call of the Senate.

Mr. COCKRELL, Mr. GORMAN, and several others. You can not do that.

The PRESIDING OFFICER (Mr. GALLINGER in the chair). No.

The result was announced—yeas 39, nays 38, as follows:

YEAS—39.

| | | | |
|---|---|---|---|
| Alger | Culberson | Heyburn | Overman |
| Bailey | Daniel | Latimer | Patterson |
| Bard | Dubois | McCreary | Penrose |
| Bate | Elkins | McCumber | Perkins |
| Berry | Foraker | McEnery | Simmons |
| Blackburn | Foster, La. | McLaurin | Stewart |
| Carmack | Gallinger | Mallory | Stone |
| Clark, Mont. | Gibson | Martin | Taliaferro |
| Clay | Gorman | Morgan | Teller |
| Cockrell | Hansbrough | Newlands | |

NAYS—38.

| | | | |
|---|---|---|---|
| Allee | Cullom | Fulton | Millard |
| Allison | Depew | Gamble | Nelson |
| Ankeny | Dick | Hale | Platt, Conn. |
| Ball | Dietrich | Hopkins | Proctor |
| Beveridge | Dillingham | Kean | Quarles |
| Burnham | Dolliver | Kearns | Scott |
| Burrows | Dryden | Kittredge | Smoot |
| Clapp | Fairbanks | Lodge | Spooner |
| Clark, Wyo. | Foster, Wash. | Long | |
| Clarke, Ark. | Frye | McComas | |

NOT VOTING—13.

| | | | |
|---|---|---|---|
| Aldrich | Hawley | Pettus | Wetmore |
| Bacon | Knox | Platt, N. Y. | |
| Burton | Mitchell | Tillman | |
| Crane | Money | Warren | |

So the motion to lay the motion to reconsider on the table was agreed to.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

The title was amended so as to read: "A bill to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico to form a constitution and State government and be admitted into the Union on an equal footing with the original States."

Mr. FORAKER. I move that the Senate adjourn.

The motion was agreed to; and (at 8 o'clock and 50 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, February 8, 1905, at 12 o'clock meridian.

## HOUSE OF REPRESENTATIVES.

### TUESDAY, *February 7, 1905.*

The House met at 11 a. m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of yesterday's proceedings was read and approved.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. PARKINSON, its reading clerk, announced that the Senate has passed bills of the following titles; in which the concurrence of the House of Representatives was requested:

S. 3478. An act making provision for conveying in fee the piece or strip of ground in St. Augustine Fla., known as "The Lines," for school purposes; and

S. 6232. An act to provide for circuit and district courts of the United States at Selma, Ala.

The message also announced that the Senate had passed without amendment bill of the following title:

H. R. 18523. An act making an appropriation for fuel for the public schools of the District of Columbia.

The message also announced that the Senate had insisted upon its amendment to the bill (H. R. 10558) referring the claim of Hannah S. Crane and others to the Court of Claims, disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. STEWART, Mr. CLAPP, and Mr. MARTIN as the conferees on the part of the Senate.

The message also announced that the Senate had passed the following resolution:

*Resolved*, That the Secretary be directed to furnish to the House of Representatives, in compliance with its request, a duplicate engrossed copy of the bill (S. 285) to divide the State of Oregon into two judicial districts.

#### MESSAGES FROM THE PRESIDENT OF THE UNITED STATES.

Sundry messages, in writing, from the President of the United States were communicated to the House of Representatives, by Mr. BARNES, one of his secretaries, who also informed the House of Representatives that the President had approved and signed bills and joint resolutions of the following titles:

On January 31, 1905:

H. R. 12898. An act to create a new division in the eastern judicial district of the State of Missouri.

On February 1, 1905:

H. J. Res. 164. Joint resolution for the printing of a compilation of the laws of the United States relating to the improvement of rivers and harbors;

H. R. 2052. An act for the relief of Ramon O. Williams and Joseph A. Springer;

H. R. 8460. An act providing for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture;

H. R. 15477. An act to change the name of a portion of Thirteen-and-a-half street to Linworth place;

H. R. 16450. An act to authorize certain changes in the permanent system of highways, District of Columbia; and

H. R. 16570. An act to amend an act entitled "An act to authorize the construction of a bridge across the Tennessee River in Marion County, Tenn.," approved May 20, 1902.

On February 2, 1905:

H. R. 6375. An act for the relief of the executors of the estate of Henry Lee, deceased;

H. R. 11370. An act to relieve the Italian-Swiss Agricultural Colony from the internal-revenue tax on certain spirits destroyed by fire; and

H. R. 16790. An act making Norwalk, Conn., a subport of entry.

On February 3, 1905:

H. J. Res. 181. Joint resolution authorizing the Secretary of War to transfer to the militia cavalry organization at Chattanooga, Tenn., a certain unused portion of the national cemetery reservation at Chattanooga, Tenn.;

H. R. 17333. An act to authorize the construction of a bridge across Red River at Shreveport, La.; and

H. R. 15895. An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1906, and for other purposes.

On February 4, 1905:

H. R. 18035. An act to amend section 552 of the Code of Laws for the District of Columbia, relating to incorporations;

H. R. 3950. An act for the relief of W. R. Akers, of Alliance, Nebr.;

H. R. 3799. An act granting a pension to Emma Cortright;

H. R. 4194. An act granting a pension to Elizabeth Neilan;

H. R. 4627. An act granting an increase of pension to Annie Young;

H. R. 5123. An act granting a pension to Maria Eldred, formerly Maria Olmstead;

H. R. 5821. An act granting a pension to Mary A. Johns;

H. R. 9824. An act granting a pension to William Hays;

H. R. 10712. An act granting a pension to Henrietta Weidner;

H. R. 12818. An act granting a pension to Nichols M. Brockway;

H. R. 13910. An act granting a pension to Henry E. Wright;

H. R. 14919. An act granting a pension to Kearney May;

H. R. 15864. An act granting a pension to Margaret La Parle;

H. R. 16109. An act granting a pension to Alice W. T. Groesbeck;

H. R. 16683. An act granting a pension to Jesse Peters;

H. R. 16715. An act granting a pension to Helen Calvert;

H. R. 16904. An act granting a pension to Louis Sherard;

H. R. 130. An act granting an increase of pension to Washington I. Cook;

H. R. 132. An act granting an increase of pension to James P. Griffith;

H. R. 606. An act granting an increase of pesion to Vincent M. Cartwright;

H. R. 666. An act granting an increase of pension to Eva M. Kingsbury;

H. R. 723. An act granting an increase of pension to Thomas Smart;

H. R. 963. An act granting an increase of pension to Ava D. Benjamin;

H. R. 968. An act granting an increase of pension to Charles W. Young;

H. R. 1286. An act granting an increase of pension to John Brasch;

H. R. 1324. An act granting an increase of pension to Thomas Skidmore;

H. R. 1445. An act granting an increase of pension to John Ellis;

H. R. 1491. An act granting an increase of pension to Martin L. Pembleton;

H. R. 1573. An act granting an increase of pension to Cyrus Hurd;

H. R. 1901. An act granting an increase of pension to Warren F. Barnes;

H. R. 2046. An act granting an increase of pension to Peter W. Kreeger;

H. R. 2191. An act granting an increase of pension to William C. Pollard;

H. R. 2469. An act granting an increase of pension to William Stone;

H. R. 2476. An act granting an increase of pension to Sampson T. Grove;

H. R. 2781. An act granting an increase of pension to Alta Mira Parsons;

H. R. 2946. An act granting an increase of pension to Albert Webb;

H. R. 2993. An act granting an increase of pension to Lewis Townsend;

H. R. 3002. An act granting an increase of pension to Samuel Tillinghast;

H. R. 3373. An act granting an increase of pension to Jacob Cochran;

H. R. 3831. An act granting an increase of pension to John W. Hartley;

H. R. 4169. An act granting an increase of pension to Thomas J. Brooks;

H. R. 4242. An act granting an increase of pension to Annie M. Wallace;

H. R. 4322. An act granting an increase of pension to Francis M. Hay;

H. R. 4552. An act granting an increase of pension to Orrin P. Stoffer;

H. R. 4595. An act granting an increase of pension to Charles D. Fortney;

H. R. 4676. An act granting an increase of pension to James B. Judson;

H. R. 4873. An act granting an increase of pension to John McKenzie;

H. R. 4900. An act granting an increase of pension to Sarah Hodgson;

H. R. 4927. An act granting an increase of pension to Eugene P. Tewksbury;

H. R. 4942. An act granting an increase of pension to Adam Hand;

H. R. 5153. An act granting an increase of pension to Jonathan Stewart;
H. R. 5243. An act granting an increase of pension to Hiram Qualk;
H. R. 5286. An act granting an increase of pension to Obadiah J. Merrill;
H. R. 5383. An act granting an increase of pension to Samuel Shafer;
H. R. 5822. An act granting an increase of pension to Eveline V. Ferguson;
H. R. 5884. An act granting an increase of pension to Samuel K. White;
H. R. 5951. An act granting an increase of pension to Joseph M. White;
H. R. 5997. An act granting an increase of pension to James Hammond;
H. R. 6310. An act granting an increase of pension to Robert Clarke;
H. R. 6354. An act granting an increase of pension to George M. Simmons;
H. R. 7000. An act granting an increase of pension to John White;
H. R. 7074. An act granting an increase of pension to Jesse Sims;
H. R. 7987. An act granting an increase of pension to Francis Scott;
H. R. 8049. An act granting an increase of pension to John S. Parker;
H. R. 8708. An act granting an increase of pension to David C. Posey;
H. R. 8859. An act granting an increase of pension to Charles J. Esty;
H. R. 8917. An act granting an increase of pension to Michael Marx;
H. R. 9552. An act granting an increase of pension to Peter Williams;
H. R. 9553. An act granting an increase of pension to Hattie L. Rich;
H. R. 9621. An act granting an increase of pension to William Lance;
H. R. 9696. An act granting an increase of pension to Henry S. Austin;
H. R. 9774. An act granting an increase of pension to James M. Prince;
H. R. 9860. An act granting an increase of pension to Augustus Colvin;
H. R. 9906. An act granting an increase of pension to Thomas P. Dunn;
H. R. 9939. An act granting an increase of pension to Martha Higgins;
H. R. 10360. An act granting an increase of pension to Mary Flynn;
H. R. 10680. An act granting an increase of pension to Samuel B. Coe;
H. R. 11015. An act granting an increase of pension to Joseph Wardle;
H. R. 11016. An act granting an increase of pension to Samuel P. Short;
H. R. 11090. An act granting an increase of pension to Joseph Reese;
H. R. 11492. An act granting an increase of pension to Samuel B. Bartley;
H. R. 12254. An act granting an increase of pension to Matthew H. Bevan;
H. R. 13082. An act granting an increase of pension to William E. Wheeler;
H. R. 13170. An act granting an increase of pension to Ruth M. Shepley, now Haskell;
H. R. 13241. An act granting an increase of pension to David Deardourff;
H. R. 13620. An act granting an increase of pension to Silas W. Squires;
H. R. 13658. An act granting an increase of pension to Henry Smith;
H. R. 14140. An act granting an increase of pension to William Y. Clinton;
H. R. 14489. An act granting an increase of pension to John M. Porter;
H. R. 14635. An act granting an increase of pension to Alexander Moore;
H. R. 14662. An act granting an increase of pension to Aaron Fanshaw;
H. R. 14799. An act granting an increase of pension to Napoleon B. Wing;
H. R. 14889. An act granting an increase of pension to Alfred W. Dearborn;
H. R. 14936. An act granting an increase of pension to James T. Wolverton;
H. R. 15030. An act granting an increase of pension to David Rothschell;
H. R. 15190. An act granting an increase of pension to James M. Paul;
H. R. 15197. An act granting an increase of pension to Calvin C. Griffith;
H. R. 15244. An act granting an increase of pension to Rebecca V. Mackenzie;
H. R. 15308. An act granting an increase of pension to Francis M. Prewett;
H. R. 15344. An act granting an increase of pension to William B. Atwater;
H. R. 15660. An act granting an increase of pension to Jacob R. Sharretts;
H. R. 15686. An act granting an increase of pension to Anna A. Dunn;
H. R. 15722. An act granting an increase of pension to David Guthrie;
H. R. 15732. An act granting an increase of pension to Edwin O. Pierce;
H. R. 15733. An act granting an increase of pension to Peter Horth;
H. R. 15760. An act granting an increase of pension to John W. Strayer;
H. R. 15762. An act granting an increase of pension to James L. Olmsted;
H. R. 15781. An act granting an increase of pension to Granville F. Plummer;
H. R. 15782. An act granting an increase of pension to Charles H. Warner;
H. R. 15783. An act granting an increase of pension to Charles J. Richards;
H. R. 15784. An act granting an increase of pension to Joseph Wingate;
H. R. 15786. An act granting an increase of pension to Horatio W. Longa;
H. R. 15850. An act granting an increase of pension to Samuel Shadman;
H. R. 15855. An act granting an increase of pension to Loren Austin;
H. R. 15871. An act granting an increase of pension to John Leonard;
H. R. 15872. An act granting an increase of pension to Marvin Welton;
H. R. 15892. An act granting an increase of pension to Martha F. Field;
H. R. 15893. An act granting an increase of pension to James A. McClung;
H. R. 15930. An act granting an increase of pension to William H. Cray;
H. R. 16053. An act granting an increase of pension to Florence Emery Blake;
H. R. 16077. An act granting an increase of pension to Andrew J. Clark;
H. R. 16087. An act granting an increase of pension to Harriet H. Brady;
H. R. 16108. An act granting an increase of pension to Andrew S. Ray;
H. R. 16124. An act granting an increase of pension to John Morgan;
H. R. 16125. An act granting an increase of pension to Eugene C. Moger;
H. R. 16141. An act granting an increase of pension to John Parks;
H. R. 16157. An act granting an increase of pension to Charles W. Martin;
H. R. 16171. An act granting an increase of pension to Sarah D. Tarver;
H. R. 16172. An act granting an increase of pension to Georgia A. Warren;
H. R. 16173. An act granting an increase of pension to Allen Riggs;
H. R. 16194. An act granting an increase of pension to James Gwyn;
H. R. 16199. An act granting an increase of pension to Joseph McGuckian;
H. R. 16259. An act granting an increase of pension to John Walz;
H. R. 16260. An act granting an increase of pension to Frederick Hark;

H. R. 16263. An act granting an increase of pension to Llewellyn Niles;
H. R. 16303. An act granting an increase of pension to Joseph W. Tyler;
H. R. 16311. An act granting an increase of pension to Morris Del Dowane;
H. R. 16348. An act granting an increase of pension to Johnson Anderson;
H. R. 16387. An act granting an increase of pension to Sarah F. Mathison;
H. R. 16442. An act granting an increase of pension to Catherine E. Ray;
H. R. 16480. An act granting an increase of pension to Preston Glover;
H. R. 16481. An act granting an increase of pension to Frederick M. Halbritter;
H. R. 16483. An act granting an increase of pension to James H. Silcott;
H. R. 16506. An act granting an increase of pension to Samuel B. Gray;
H. R. 16594. An act granting an increase of pension to Jacob A. Kryer;
H. R. 16666. An act granting an increase of pension to Alfreda B. Coburn;
H. R. 16704. An act granting an increase of pension to Michael Lewis;
H. R. 16807. An act granting an increase of pension to Elmer C. Jordan;
H. R. 16809. An act granting an increase of pension to Patrick Cotter;
H. R. 16894. An act granting an increase of pension to Jeremiah Connor, alias James Boone;
H. R. 16945. An act granting an increase of pension to Alvin B. Franklin;
H. R. 17093. An act granting an increase of pension to Felix Monaghan;
H. R. 17241. An act granting an increase of pension to David A. Miller; and
H. R. 7607. An act granting a pension to Joel W. Nye.

On February 6, 1905:

H. R. 14623. An act to amend an act approved July 1, 1902, entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes," and to amend an act approved March 8, 1902, entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," and to amend an act approved March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands," and to provide for the more efficient administration of civil government in the Philippine Islands, and for other purposes;
H. R. 17646. An act to extend certain provisions of the Revised Statutes of the United States to the Philippine Islands;
H. R. 17784. An act to authorize the construction of a bridge across the Arkansas River at or near Vanburen, Ark.; and
H. R. 7296. An act for the protection of the public forest reserves and national parks of the United States.

SENATE BILL REFERRED.

Under clause 2, Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee as indicated below:

S. 6232. An act to provide for circuit and district courts of the United States at Selma, Ala.—to the Committee on the Judiciary.

RAILROAD-RATE BILL.

The SPEAKER. Under the order of the House, the Chair declares the House in Committee of the Whole House on the state of the Union, and the gentleman from New Hampshire [Mr. CURRIER] will take the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 18588, the railway-rate bill, and the gentleman from Alabama is recognized for thirty minutes.

Mr. RICHARDSON of Alabama. Mr. Chairman, when I closed yesterday afternoon I had commenced to discuss the question of the meaning of the term reasonable or reasonableness as these terms appear in the different bills and in the statute. I think that I shall consume very little time on that question, as it is fully and entirely settled to the satisfaction of every lawyer as well as every layman that the question of the "reasonableness" as to a rate fixed by a legislative commission has become under our judicial system a judicial function.

The whole question resolves itself into this: Whether any State by its legislature, or Congress, delegating its power to an inferior tribunal, such as a railroad commission, can give to that body the right and authority to declare what a just and reasonable charge is for the transportation of property or persons by a common carrier under such restrictions and qualifications as to prevent the Federal courts from inquiring into the fact as to whether the rate so fixed gives the railroad a fair profit upon its investment and its capital, or whether it is confiscatory or not. That question I say, Mr. Chairman, is fully settled in the case of Reagan *v.* Farmers' Loan and Trust Company in 154 United States Reports, where the court says:

> The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness, both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring the process of law for its determination.

It also says:

> The courts are not authorized to revise or change the body of rates imposed by a legislature or a commission; they do not determine whether one rate is preferable to another, or what, under all circumstances, would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable and such as to work a practical destruction to rights of property, and, if found so to be, to restrain its operation.

This doctrine is clearly enunciated in Smyth *v.* Ames (169 U. S.) and many other cases.

Mr. Chairman, I believe that the word "reasonable" or "reasonableness," as used in these bills and this statute, has a relative meaning. It does not mean confiscation, necessarily. There might be an unreasonable rate and yet it might not proceed to the extent of confiscation, and I can easily imagine rates fixed that might be deemed unreasonable—not yielding profits—that would not be confiscatory. A railroad might be managed in a negligent and unbusinesslike manner. Its officers might be dishonest and inefficient and reckless in expenditures. These are all considerations to be weighed. As a practical proposition, while it is most difficult, in the exercise of the judicial function, to point out where reasonable ends and confiscation commences, I say that confiscatory rates are scarcely possible. It will be noticed, Mr. Chairman, that the courts in discussing this question as to the reasonableness of a rate refer to it as an "entirety" or "a body."

This, taken in connection with the fact that the "act to regulate commerce" nor the bill under consideration gives the Commission the authority to regulate rates "generally," would remove the probability of a rate, which can only apply to commodities of a dependent or relative nature and belonging to a certain classification, can ever become confiscatory. It might be deemed unreasonable and not calculated to yield the carrier a profit on that particular product or commodities of like dependent nature. Railroad rates, upon the theory looking to profits, are based upon the aggregate and not specific commodities of shipment. If the traffic manager of a railroad at the end of the year's business finds out that the expenses of his road have exceeded its receipts he simply makes a "raise all along the line." The science of fixing a railroad rate, as explained in the hearings before the Interstate Commerce Committee of the House, simply is "How much will the commodity bear?"

If the Commission had the authority to make initiative or general rates, then I see how a rate or rates could be so unreasonable as to amount at one stroke to confiscation. Such extreme and drastic legislation as that may be advocated by those who are guided by blinded prejudices against corporate interests, but the better judgment of the thoughtful people of our country is that the public and the railroads should have exact and full justice done to each. That is the proposition that we are struggling with. It may be that a commission under an arbitrary exercise of its power would fix such a rate that it would be confiscatory; but along this shadowy line, between what is a reasonable rate, allowing the railroad to realize profits upon its investment and upon its capital, and confiscation, what have we to do as prudent, common-sense men? We have to submit it to the ability, integrity, and common sense of the judges who so honorably and in a distinguished manner fill the high position of Federal judges in our country.

I quote the following:

In Smyth *v.* Ames (169 U. S., 546) the court said:

> Each case must depend upon its special facts, and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property, for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered, in determining whether the legislature has, under the guise of regulating rates, exceeded its constitutional authority and practically deprived the owner of property without due process of law. * * *

The utmost that any corporation, operating a public highway, can rightfully demand at the hands of the legislature, when exerting its general powers, is that it receive what under all the circumstances is such compensation for the use of its property as will be just both to it and to the public.

We can not assume, Mr. Chairman, that when a man is appointed to the high judicial position and honor of being a Federal judge, one of the most dignified and important positions that we can confer upon anyone, that he would leave his common sense at home when he goes on the bench; and it is there and in that that the railroads get their great protection. In that connection, Mr. Chairman, I beg leave to read something more. What protection? And that is why I contend so earnestly for the Davey bill, because in that bill and in the principles that are laid down in that bill I contend that the railroads of this country have the same safeguard and the same protection that the farmers have, that the laborers have, and that all other interests of this country have.

I understand fully that by reason of the public character and duties of railroads that different obligations devolve on them, but in the matter of abstract justice the courts administer that alike to all interests and all classes.

What is the guaranty that the law gives the railroads for safeguarding and protecting and giving security to their interests? Mr. Chairman, it is laid down in the case of Smythe *v.* Ames (169 U. S., 468), where it is said:

The basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public; and in order to ascertain that value the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute, and the sum required to meet operating expenses are all matters for consideration and are to be given such weight as may be just and right in each case.

What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience; and on the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

Mr. Chairman, what fairer rule, under the great judiciary system as established in this country, could any interest possibly ask than that criterion and that standard established, by which the interests of railroads are to be considered and acted upon?

Mr. BARTLETT. May I ask a question right there?

Mr. RICHARDSON of Alabama. Certainly.

Mr. BARTLETT. And what court or tribunal, whether the Interstate Commerce Commission or this commerce court, can decide otherwise than was there decided? And if this Commission or this court makes a different rule and decides differently, so as to confiscate the property of the railroad, how would that decision be regarded by the Supreme Court of the United States?

Mr. RICHARDSON of Alabama. It would be promptly repudiated. That would be exactly right. When we have such a broad principle of security and protection laid down as that in our general judicial system it obviates absolutely the necessity of a special court of transportation as provided for in the bill of the majority. The special court is a fifth wheel to the judicial wagon. There is no necessity for it except to embarrass the movement of this great project for relief which we have on hand.

And, further than that, in the same case I want to read:

What are the considerations to which weight must be given when we seek to ascertain the compensation that a railroad company is entitled to receive, and a prohibition upon the receiving of which may be fairly deemed a deprivation by legislative decree of property without due process of law? Undoubtedly—

Says the Supreme Court of the United States—

that question—

A great question, as we all know it is—

that question could be more easily determined—

By whom? Not a special court created for the trial of railroad cases only—

by a commission composed of persons whose special skill, observation, and experience qualifies them to so handle great problems of transportation as to do justice both to the public and to those whose money has been used to construct and maintain highways for the convenience and benefit of the people.

Does that Court say that in order to do these railroads justice we must go outside of the judicial system that is so well established and understood and create a special court of transportation? No; it says it can be better done by "a commission composed of persons whose special skill, observation, and experience qualifies them to handle great problems of transportation."

Why, Mr. Chairman, take this proposition that is commented on by the Supreme Court. Complaint was made in Nebraska, if you please, that the rates in that State were 40 per cent higher than they were in the great State of the gentleman who has charge of the time on the other side of the floor [Mr. HEPBURN]—that the rates were 40 per cent higher in Nebraska than in Iowa—a State which in my opinion and judgment, as I now say in the presence of the distinguished gentleman from Iowa [Mr. HEPBURN], that needs the relief of the Davey bill more than any other State in the Federal Union. Why, the Court said that while the rates were 40 per cent higher in Nebraska than they were in Iowa, yet the railroads realized greater receipts out of their rates in Iowa than they did in Nebraska. Justice in such a case did not require that the Iowa rates should be raised to the Nebraska rates nor vice versa. Why? That is what the Court means here when it says the problem should be committed to a commission of experienced men so that they could weigh such conditions.

In Iowa the population was dense; cities and towns were strung all along the lines of the railroads. Nebraska was a new State, just developing; people were scarce, cities and towns were far apart. Yet, if it applies to States, then it also in a modified form applies to railroads and individual communities, and that is why the Davey bill provides that no commission shall have the power to increase a rate fixed and published by the common carrier.

Mr. Chairman, I leave that and go to the present bill to talk somewhat about that as compared with the bill of the minority, called the "Davey bill."

Mr. HEPBURN. Mr. Chairman, if my colleague will allow me I should like to ask him a question.

Mr. RICHARDSON of Alabama. I will; but I have very little time.

Mr. HEPBURN. Then I will forego the privilege.

Mr. RICHARDSON of Alabama. The Democratic position, fully expressed in the Davey bill, is that the Commission should be vested with the power, where a given rate has been challenged, and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the finding of the Commission to take effect after twenty days' notice, and to obtain and remain operative unless and until reversed by the court of review and the order of the Commission declared to be error. The Davey bill prohibits the Commission from raising a rate published and declared by the common carrier. The logical effect of raising a rate is a blow at competition. Besides this, the railroads are likely to be able to take care of themselves on the low-rate question. The Davey bill requires that the appellate court shall pass only on the record and the evidence sent up by the Commission. I ask to read in this connection the statement of Mr. Murdo McKenzie, who represents 80 per cent of the cattle growers of the West, made at one of our hearings:

Now, I can point out a case to you where we have to pay for the same service 6½ cents per hundred more than our neighbors in Colorado pay. In the point in Texas where I live I am 550 miles from market. Las Animas, Colo., is 550 miles. My cattle friend from Colorado has to pay 28½ cents per hundred and I have to pay 34½ cents a hundred. We can show the railroads, I think, by figures, that it does not cost them 1 cent more to carry our cattle than it does to carry the cattle of the man who lives in Colorado. Some years ago we had a meeting with traffic managers in St. Louis. Mr. Cowan has already referred to that meeting in his statement before this committee. We pointed out this inequality in the rates at that meeting, and we asked them to correct it. They admitted that we were right, but they told us that in order to put us on a more equal footing with the men in Colorado they would raise the Colorado rate, which they promptly did.

Now, that is the way the railroads have, gentlemen, of correcting rates. They were perfectly satisfied with the rate they were getting from Colorado until we complained. When we made a complaint then they came forward and said: "We will equalize the rate by raising the other man's rate." Now, we do not think that is right; we do not think it is fair; in fact, we feel that it is very unfair, and we ask you gentlemen here to prepare such a bill, and report it, as will give us protection under the law—that we may have a place to go where we know we will get justice.

I do not blame the railroad men; I have friends among them. I think that probably I would do as they do if I were in their position, and, on the other hand, they would probably feel very much as I do if they were in my place. I am satisfied when you look this matter over and consider it very fully that you will see that the cattlemen and the industries in the Southwest require your protection. We come to you hoping that we will get it, and we are satisfied that before you are though you will give us what we want.

The bill also provides that whatever Federal court takes jurisdiction of a case brought up by appeal from the Interstate Commerce Commission shall not consider any testimony except such as is contained in the record sent up by the Commission. This provision of the Davey bill is of vital importance if we are ever to get relief from unreasonable and unjust charges made by railroads. The bill of the majority contains a section exactly the reverse of this. The bill provides that the Commission shall have authority to substitute a rate for a joint rate among different common carriers and to apportion the same among the carriers interested. It provides a penalty and the employment of special counsel. It makes no provision for the creation of a special extra transportation court.

That, Mr. Chairman, is the Davey bill. I compared it with the Quarles-Cooper bill yesterday. They are the same bills, except that the Davey bill secures more effectiveness by speedy results than the Cooper-Quarles bill, and there is some difference in the two bills in matter of procedure. Mr. Chairman, we have had a good many statements about other bills, and rumors have been eagerly circulated around the Capitol, in the public press, and otherwise about this and the other measure. There was the Hepburn bill, and it was said to be an "administration bill." Newspaper reports give us an account of consultations with the Attorney-General, with the President, and with various other prominent Republican citizens. Nobody has any objection to that except that I do not believe, Mr. Chairman, that the legislative body, the Congress, of the United States, the House of Representatives particularly, that comes directly from the people, is dependent upon what the President says, or what the Attorney-General says, or what the Secretary of the Treasury says, or any other officer of the Government in shaping or framing our legislation.

We are a part of the lawmaking power, and there is no one upon whom we are dependent as to what laws we shall make for the good of the people.

Now, it was said yesterday in the Star that the bill of ESCH and TOWNSEND—the gentleman from Michigan and the gentleman from Wisconsin—was the Administration bill. Mr. Chairman, we are all disposed to give the President of the United States full credit for what he has done in bringing up his reluctant party to the full consideration of this important subject. We do not believe—I do not, for one, believe—that the President is taking any special interest in the details of any bill. I do not believe that the President can possibly accept the complicated machinery of this bill as the best means to carry out the relief he suggested. He knows that we are agreed on the principle that the Interstate Commerce Commission ought to have the power to declare a rate, for that is the primal question, and the details are left with us to agree upon, arrange, and fix up. The details of the Townsend bill provides for delays. I do not believe that the President stands or will stand by the Townsend-Esch bill, when its real glaring defects, brought about chiefly in the creation of a special court, are pointed out. The single fact that you can not trust the courts as now organized, but must have a special court, is of itself ground for suspicion.

I did not know that there was so much pressure on the other side of the House to secure the adoption of the rule and then the bill.

I know there are gentlemen over there that do not want to vote for the Townsend-Esch bill. I know there are some gentlemen on this side, to be perfectly fair, that do not want to vote for the Davey bill. I see here what purports to be a rumor published yesterday afternoon in the Evening Star, purporting to be the organ of the Administration and of course if we see anything there about leading Republicans then it must be true. The distinguished gentleman from Iowa [Mr. HEPBURN] is represented to have said to the Republicans of Pennsylvania, who are understood to be insurgents or in revolt against this whole business of railroad legislation for the present—"Ah," he says, "if you do not come up and stand by this measure," the paper goes on to say, "shaking his long forefinger," "we will tackle your tariff and bust it wide open." Is that back of this bill? Is that the spirit that is dragging and pulling the majority, or some of them? It is hardly necessary for me to say that with that shake of the finger and the mention of tackling the tariff he brought the Pennsylvanians into line. Now, Mr. Chairman, let us look at the Townsend-Esch bill for a short time.

Mr. DALZELL. Will the gentleman yield for an interruption?

Mr. RICHARDSON of Alabama. I dislike very much to refuse, but I have but a few minutes.

The CHAIRMAN. The gentleman from Alabama declines to be interrupted.

Mr. RICHARDSON of Alabama. This bill, Mr. Chairman, and I do not hesitate to say it, contains the chief and principal factors of the Hepburn bill. By a careful comparison it will be seen that the only features of the Hepburn bill left out of this are the provisions for bond on appeal and abolishing the Interstate Commerce Commission. I do not mean to reflect credit or discredit on anybody, but take the fourteenth section, taken literally word for word from the Hepburn bill, and you will find that it contains "the railroad joker" of this bill. You have to apply that term to this section in order to make this House and the country comprehend its full meaning. It takes all the other tricks of the bill. Sections 12, 13, and 15 are taken from the Hepburn bill, except the bond requirement is left out of section 15 of this bill. No just ground of complaint can be made of this. Nor would I, Mr. Chairman, call attention to this fact unless it so happens that we find the most objectionable features of the bill in these sections.

I shall take up the bill not seriatim by sections. Take section 14. Why, it provides clearly that after the case has gone from the Interstate Commerce Commission, the rate has been fixed and it is carried up, that the court of transportation can try the case over de novo upon its merits. What is the meaning of that? That, in connection with the latter part of section 3, says that the Commission may at any time, whether before or on notice to the court during the progress of a judicial review of its action by the court of transportation, reopen its proceedings in any case, and modify, suspend, or annul its former order, ruling, or requirement.

Does any sensible man believe for a moment that under this section 14, which not only provides for trial de novo, but provides for taking all kinds of testimony that may hereafter arise, which I will point out, that the Interstate Commerce Commission, having an intimation that the case would be reopened, to be tried over again de novo on evidence that the Commission had never heard, to save themselves they would reopen it. Why not? They can do it, and it means confusion in every respect.

I ask the framers of this bill if it is not true that the chief basis of complaint among the shippers, consumers, and producers since the decision of the maximum rate case is that the railroads would never submit their evidence in full to the Interstate Commerce Commission, but would withhold it, and after appeal and on claim of newly discovered evidence and a reopening of the case by the appellate court, the railroad would submit its case in full? What was the result? The evidence that was brought in on the reopening of the case by the upper court, not having been heard by the Commission, made an entirely different case from what the Commission had acted on when it fixed the rate, being reviewed by the higher court. One can see instantly the great disadvantage the Commission labored under. Yet this section 14 reaffirms that practice of delay and injustice. Section 14 also provides:

SEC. 14. That the court of transportation, as a court of equity, shall be deemed always open for the purpose of filing any pleading, including any certification from the Interstate Commerce Commission, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, including temporary restraining orders, preparatory to the hearing upon their merits of all causes pending therein; and any justice of the court of transportation may, upon reasonable notice to the parties, make and direct and award at chambers, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, including temporary restraining orders, wherever the same are grantable as, of course, according to the rules and practice of the court.

It is admitted, of course, that all of the pleadings filed and process issued, including interlocutory motions and other proceedings, are taken "preparatory to the hearing upon their merits of all causes pending therein."

Now, the fair construction is that all these steps taken "preparatory to the hearing upon its merits" of a case are taken without notice to all the parties interested; while in the latter part of the section it provides:

And any justice * * * may, upon reasonable notice to the parties, make and direct and award at chambers and in vacation, as well as in term, all such process, commissions, orders, rules, and other proceedings, including temporary restraining orders, wherever the same are grantable, as of course, according to the rules and practice of the court.

The court may, "upon reasonable notice, make award, etc." I contend that in the doubt and complexity of the chancery machinery provided in this bill the rate fixed by the Commission may be indefinitely delayed. We certainly must know that temporary injunctions are granted as a matter of course on ex parte affidavits.

I contend, Mr. Chairman, that this section proceeds upon the theory that the order of the Interstate Commerce Commission in fixing a fair and just rate is unlawful. As lawyers, we comprehend the difference as to restraining orders as applicable to property rights and the threats of violence.

We know that whenever a complainant is entitled to an injunction on the face of his bill he can in a proper case obtain a restraining order pending the hearing of the question whether he is entitled to an injunction, and the injunction should never be issued until after notice. The defendant against whom the restraining order is granted can speedily have a hearing upon the motion for an injunction, and if upon that hearing the court concludes that the plaintiff is not entitled to the injunction the restricting order will be dissolved. This certainly is the rule which applies to all controversies involving property rights, and the rule is subject to much greater abuse and consequent injury in controversies involving property rights than in suits filed to restrain threatened violence against the public peace and the wanton destruction of property.

No step should be taken looking to the stopping of the order

of the Commission fixing a reasonable rate that does not fully and plainly provide for full notice to be given to all parties interested before hearing. It is well known that "restraining orders" never run against lawful rights or the doing of lawful acts, but against wrongful acts, and wrongful conduct. No man in legal contemplation can be injured by being restrained either temporarily or permanently from doing wrong. Therefore, I contend that it must be patent to everyone that there is an imperative necessity that the rule invoked and to be enforced by this bill, relative to restraining orders, should be radically changed as applicable to property or property rights, which is the question in the rate-making power of the Commission. The rule invoked by the bill of the majority, as applicable to the rate made by the Commission, can do no such injury when applied to threatened violence as it does to property rights. The lawful conduct of a man or men who band together and threaten violence is not affected by such a rule, for their rights are in nowise affected, for no man or set of men has the right to do wrong.

If the order made by the Commission fixing a rate is thus hampered, the battle against railroads on unjust and unreasonable charges will veritably be a transparent "sham battle."

Why, Mr. Chairman, the following bill was introduced in the House not many days since, which fully explains itself. Here it is:

A bill (H. R. 18327) to regulate the granting of restraining orders in certain cases.

*Be it enacted, etc.*, That in cases involving or growing out of labor disputes neither an injunction nor a temporary restraining order shall be granted, except upon due notice to the opposite party by the court in term, or by a judge thereof in vacation, after hearing, which may be ex parte if the adverse party does not appear at the time and place ordered.

The above bill, it was unreservedly stated, had the indorsement and approval of the President and Attorney-General. It is true that the bill, since the rate-making bill has been claiming attention, has been summarily laid on the table in the House. Apply the same rule to the order of the Commission making the rate and you will have plain sailing. Refuse to do it and you are engaged in a sham battle with the railroads.

Again, from section 12, another one of the provisions of the bill of the distinguished Iowan:

The findings of fact made and reported by the Commission shall be received as prima facie evidence of each and every fact found, and no evidence on behalf of either party shall be admissible in any such suit or proceeding which was not offered, but which with the exercise of proper diligence could have been offered, upon the hearing before the Commission that resulted in the particular order or orders in controversy.

That is the ordinary law that prevails all over the country in courts of all the States. But listen to what it adds to it:

But nothing herein contained shall be construed to forbid the admission in any such suit or proceeding of evidence not existing—

Not existing at the time—

or which could not, with due diligence, have been known to the parties at the time of the hearing before the Commission.

What kind of due diligence, Mr. Chairman, I ask, can you exercise to find out any evidence that is not existing at the time of the hearing before the Commission? Pray tell me what kind of diligence can a man use to find out evidence that "is not existing?" I call the attention of the distinguished gentleman from Iowa [Mr. HEPBURN] to that, and ask him to answer it.

Which could not, with due diligence have been known to the parties.

Require a man "to know" something about that which does "not exist!"

Ah, Mr. Chairman, this whole business of a special court is intended to provide a tangled skein and network of chancery technicalities. That is the condition. It is an invitation to the railroads, in their power and strength, to go forward and make up all the testimony they can, all the testimony that was not "in existence" at that time. I read, Mr. Chairman, a few days since, from the recently reelected Republican governor of the State of Iowa, a splendid interview on the provisions of this bill. It is as follows:

It creates a new court composed of five judges, with its retinue of clerks, bailiffs, stenographers, and messengers, which, instead of clearing up things, will serve simply to still further entangle our complicated judicial system.

It goes without saying that the orders of the Interstate Commerce Commission or any other commission must be reviewable by the courts, but we have plenty of them already organized, with all their machinery in motion, operating upon priciples well understood, and I sincerely hope that they will be permitted to administer justice in the usual time-honored way.

Section 1 is unfair, because it delays the operation of the rate established by the Commission for sixty days and then allows the railway company to indefinitely postpone or suspend it if the court is of the opinion that the "order or requirement" is "unreasonable or unlawful."

I think that the only just provision on this subject is to declare that the rate made by the Commission shall go into effect as soon as the new rate can be published, and remain in effect until annulled by the final decree of the court, unless the Commission is restrained by preliminary injunction issued according to the established rules of a court of equity.

Section 15 will be fully commented on by other gentlemen on the floor, but I will say that section also comes from the Hepburn bill. Why did the framers of the bill not put right down in plain language easily understood when and how and the rules under which an appeal could be taken, but instead thereof proceed to say:

That in all cases affected by this act where, under the laws heretofore in force, an appeal or writ of error lay from the final order, judgment, or decree of any circuit court of the United States to the Supreme Court an appeal or writ of error shall be from the final order, judgment, or decree of the court of transportation to the Supreme Court and that court only.

The stumbling-block to the enforcement of the order made by the Commission declaring a rate under this section will be "under the laws heretofore in force" to say certainly when an appeal would lie from a final judgment and the limitations of the same. All of this means complexity, delay, and vexation. The rules governing an appeal could have been easily set forth. The bill will be a failure.

I have to call attention to the report of the majority as to the very luminous manner in which section 7 of the bill is explained. It says:

It is believed that cases will be greatly expedited and that a court constituted as provided in the bill will become expert in matters of interstate commerce and a greater degree of uniformity and continuity will be found in its decisions than in those of a court of less expert experience.

This is the only explanation vouchsafed to this House. Are any facts given to base an opinion on that cases will be dispatched more rapidly by these five circuit judges who will constitute the transportation court than the same judges would have dispatched the cases in the circuit courts over which they preside? The Department of Justice reports that four additional circuit judges are needed for the regular business of the circuits. To whom did the Department of Justice make this report? In what circuits are the judges overcrowded with business and work? Have the circuit judges complained of overwork? Congress is entitled to full information on all these matters before we should be called to take such an important step as to appoint five circuit judges.

I notice, Mr. Chairman, that my time is about to expire, and before it does I wish to call attention to the bill known as the "Hearst bill." It has been boastfully asserted by rumor, loose talk, and otherwise, all, I think, coming from this side of the Chamber, that the Davey bill has already five additions taken from the Hearst bill. If a section contained correct principles and was right, it ought to be indorsed—it would matter not from whose bill or brain it came.

I say here in the presence of this House, knowing exactly what I am saying, that there is not a provision in the Davey bill that was taken from the Hearst bill; not one. And I now challenge any gentleman here on this side among the supporters of Mr. HEARST as a Presidential candidate for the Democratic nomination four years hence, or his bill, to point out such a provision. I will say—and I believe I speak for the majority of the minority of the Interstate and Foreign Commerce Committee—that we objected most seriously to the Hearst bill, because it was drastic, unjust, and unfair in some of its provisions.

I believe that the provision for furnishing cars in section 7 of the House bill, as to requiring a carrier to furnish cars and pronouncing the failure by the carrier to do so "unjust discrimination and undue and unreasonable prejudice and disadvantage," and refusing to allow the carrier to show that no other shippers have been preferred over the complainant, is an unparalleled rule of wrong and injustice to apply to any interests of our country.

I could not support the doctrine or policy set forth in the twelfth section of the Hearst bill:

Said court shall thereupon, as speedily as may be, proceed to review the order appealed from as to its justness, reasonableness, and lawfulness upon the said record returned by the Commission, and thereupon if, after hearing the parties, said court shall be of the opinion that such order is unjust, unreasonable, or unlawful, it shall modify, set aside, or annul the same by appropriate decree or remand the cause to the Interstate Commerce Commission for a new or further hearing; otherwise the order of said Commission shall be affirmed.

That means, Mr. Chairman, that the appellate court of interstate commerce has the right to "modify" the order of the Commission fixing a rate. In other words, to modify an order means to change the rate, and this the Supreme Court of the United States has said is a legislative act not within the province of the judiciary. Gentlemen may differ with me in my construction, but I can not understand the word "modify," as used in that paragraph, to mean anything else.

Now, Mr. Chairman, something has been said about President

Roosevelt in connection with this bill to give the Commission power to declare a rate. We owe President Roosevelt much for having driven his reluctant party to the consideration of this great measure. It is true Democrats have proclaimed for years past the same principles that the President declared when he said:

> We believe that the Interstate Commerce Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review; and we also believe that all proceedings brought in the courts to arrest, enjoin, or annul a rate declared by the Commission shall be expedited in all the courts to which such cases may be carried, as well as the cases arising under the act to regulate commerce.

We as Democrats are standing squarely and courageously by the principles there declared. It matters not with us who enunciated, for they are right. President Roosevelt is entitled to great credit for what he has said. I hope his acts will comport with his words. We believe the bill of the majority will not give the relief the President advises. It is complicated with delays. Our substitute bill is plain, easily enforced, and easily understood. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. HEPBURN. Mr. Chairman, I yield ten minutes to the gentleman from Illinois [Mr. RAINEY].

Mr. RAINEY. Mr. Chairman, the gentleman from Alabama [Mr. RICHARDSON] never said a truer thing than he has just now said in this House when he denied that any provision in the Davey bill is taken from the Hearst bill. I am here to say to the gentleman from Alabama that it would not hurt the Davey bill if there had been incorporated into it every provision in the Hearst bill. The Hearst bill correctly represents the present progressive, radical tendency of the Democratic party in this country. I am here to take issue with the gentleman from Alabama [Mr. RICHARDSON] when he says that no greater calamity could happen to this country than Government ownership of railroads, and I want to ask the gentleman if he knows that the Democratic party in the great city of Chicago, where there are twice as many Democratic voters as there are in his entire State, already stands pledged to municipal ownership? Does he know that the great city of Chicago is now the storm center of Government ownership in this country? Let me say to the gentleman that upon that question in the great city of Chicago the Democrats will win, and they will win this year.

Does the gentleman know that the Democratic party in several of the great States of this Union has already taken a position in favor of Government ownership? Does the gentleman from Alabama realize that the party now is a progressive, radical party—that it stands for something and that it means something? If the gentleman does not know it he will find it out four years from now when he attempts to retract some of the things he said last night in this House. It is a matter of regret to many of us upon this side that we are not permitted to vote for a more comprehensive measure than the measure submitted by the minority, and there are some of us who do not propose to vote for it. There are some of us who are too good Democrats to follow in the direction that sort of an insufficient measure leads. For eighteen years five men skilled in the law during each year of that time have been investigating railroad problems and railroad questions. Their investigations have been carefully and conscientiously performed. At intervals they have issued elaborate reports. We have paid them in eighteen years, in salaries alone, the enormous sum of $675,000. It has cost over a million dollars to keep this Commission running for eighteen years.

They make certain recommendations in their report, and both measures now before this House turn down every one of the recommendations they make except one. In line with their report the President of the United States takes advanced positions upon these radical questions, and both these measures ignore almost entirely the suggestions he makes. There is a choice between two insufficient remedial measures. One of them is always more insufficient than the other, but I regard the Townsend bill as being the better bill, as being more in harmony with the radical tendencies of the Democratic party. I am opposed to the other bill, among other reasons for the reason that it fails to provide for a court. We have been establishing additional circuit courts of appeal in order to relieve the Federal courts, and we propose now here in this Davey bill to burden the Federal courts still more. I think the provision for a court in the Hearst bill is much better than the provision for a court in the Townsend bill, but the court provided for in the Townsend bill is better than no court at all. I am opposed to the Davey bill for the reason that no man can tell when the rate fixed by the Commission will go into effect, and that is the principal question before this House to-day so far as it relates to rate fixing.

Let me call attention to this provision in the Davey bill. The first section of it provides that the rate so fixed shall become operative "twenty days after notice." What kind of notice? Who is entitled to notice? Upon this question the bill is silent. The Townsend bill provides that it shall go into effect thirty days after notice to "all persons interested herein." The Hearst bill provides it shall go into effect at the time fixed by the order. To make things worse, if possible, here in the second clause of the Davey bill is this provision, that if "litigation shall ensue" because of such decision, then it provides that the rate or regulation shall go into effect and shall remain in force until a competent Federal court has reversed it. Now, what kind of litigation is meant? Some litigation in some State court? I do not know; nobody can tell. If the litigation is in a State court, and if it is of such character that it can never get to a Federal court, what effect will that have? If litigation commences before the expiration of the twenty days, does that have the effect of putting the rate into operation before the twenty days have expired, and if the case can never get to a Federal court how in the world is anybody ever going to get rid of the rate fixed, if it is unfair to the railroad or any other person? These are some matters which will require at least judicial construction if this bill should become a law. It would require four or five years to get it. These are some reasons why I shall vote in this House for the Townsend bill. [Applause.]

The matter of the regulation and control of railroad rates is the greatest economic question presenting itself for solution in this country to-day. The transportation of persons and property by land and water has been since the dawn of history the most important element in the development of a city or State. That country which could secure the quickest and safest transportation facilities upon the most reasonable terms by land and by water has always outstripped its commercial rivals and has become a dominant factor in the world's progress. In this country, with wise legislation upon this most important subject, we may expect soon to approach an almost ideal system of rapid and safe transportation for men and things. The days of the stage coach, the Conestoga wagon, the railroad track with wooden stringers surfaced with straps of iron, the Peter Cooper locomotive, the John Bull engine and train, the hand brake, and the old coupling appliances seem now to belong to the remote past. But there are men now living who have seen all these appliances in active and constant use.

The demand for the last half century has been for those methods and appliances which tend to annihilate time and space; and to-day long lines of steel and swiftly moving trains of cars have brought the fertile farm in the Mississippi Valley almost to the Atlantic seaboard. The ever-increasing demand for safe and rapid transportation at reasonable rates brings about a closer relation than ever existed before between transportation and the distribution of wealth. If there can be no rapid and safe distribution of wealth, then commerce is retarded and national development proceeds along slower lines. Transportation is the principal mechanism by which commodities are exchanged between separated localities.

Wealth is the product of land or natural resources and human effort. The income derived from the possession or control of natural agencies is called rent, and it is and always has been the most important factor in a nation's development and material progress. Rent depends largely upon location, and in so far as it does depend upon location transportation is the determining factor.

Recognizing this principle—in past centuries almost unconsciously—the nations of the world have for so long a time assumed and exercised the right to control transportation facilities that the right of this legislative body to control and regulate interstate transportation can not be denied and is no longer successfully challenged.

Under section 8 of the Constitution Congress is given the power to regulate interstate commerce. In the maximum-rate case (167 U. S.) the Supreme Court holds that the power to regulate includes within it the power to fix a rate, and in the Regan case (154 U. S.) the court holds that the power to regulate can be delegated to a commission. It is, therefore, well settled in this country that Congress can confer upon the Interstate Commerce Commission the right to regulate and control that part of the commerce of the country which crosses the boundary line of States.

The railroad systems of this country have become great national highways. Our transcontinental railroads were made possible by large grants of the public domain. Before the commencement of the era of railroad building in this country the State and Federal governments donated funds for the building

of turnpike roads—and turnpike roads were operated by private corporations, but always under State and Federal control. In 1806 the Federal Government commenced the building of the old Cumberland road, or "national pike." This road was built westward from Cumberland, Md., across the summit of our eastern mountain range, through vast forests, over fertile prairies, interrupted in its course only by our great rivers, through the cities of Wheeling and Columbus, until finally, twenty-one years later, it reached Vandalia, in central Illinois, nearly 1,000 miles away. At this time the superiority of the railroad as a national highway became an accepted fact, and the Government engaged no more in the construction of this kind of highways, but commenced the policy of aiding the construction of railroads.

Until work stopped on the "national pike" we had a sort of Government ownership of improved national highways. The era of railroad building in this country is almost at an end. The end of Government aid for railroads ought certainly to be reached soon; and it is peculiarly appropriate that at this time the attention of the States and the General Government should again turn to the construction of good roads, interrupted now for nearly ninety years.

In the beginning the attempt was to regulate railroads just as the State and National governments regulated turnpike roads and canals. There was a disposition to let competition fix the charges for traffic, but the original charters contained nearly always a maximum rate. In 1870, however, the States commenced to pass laws fixing rates and fares, and eighteen years ago the National Government commenced with some energy its attempt to regulate and control interstate railroads under the powers granted to it by the Consitution.

On account of the conditions which have attended railroad building in this country the Government has an inherent moral and legal right to control and regulate railroads; and on account of the importance to our national development and national progress of rapid and safe transportation at reasonable rates, it becomes a positive duty to correct without further delay the abuses which now exist.

The importance of the subject under consideration can not be overestimated. We have within the boundaries of the United States 200,000 miles of railways, connecting our great cities, bringing into close communication the manufacturing and agricultural sections of our country, extending in every direction through fertile valleys, across great rivers, and over mountain ranges. Two-fifths of the railway mileage of the entire world is found within our boundaries. We have here 10 per cent more miles of line than there is in all of Europe. The capital stock and surplus of all the national banks in the United States amounts to only one-twelfth of the capital invested in the railroads of the country. The total capital and surplus funds of all our banks, national, State, and private, added to the total capital and surplus of all the loan and trust companies in the country amounts to only one-sixth the capital invested in the railroads of the country. Agriculture is the only industry that equals, in the amount of invested capital, the capital invested in the United States in railways.

Our great railway systems have now practically passed out of the hands of the men who built them. The system of receiverships and stock manipulation prevailing here has made it possible now for the men who formerly occupied the relation of employees—officers of companies—to practically own and control the railways of the country. Railway competition is about at an end.

Two thousand years ago, in a period when militarism prevailed and when the theory of the supremacy of special privilege found few opponents, three military commanders divided between them the Roman world, in order that within his own territory each might operate unrestrained by the competition for supremacy of the others. In this country now, following the Roman idea, a few capitalists have divided up the territory. As a result we have the Vanderbilt group of roads, the Gould roads, the Harriman roads, the Moore roads, the Morgan roads, and several other groups of less importance, each of them operating in its own territory, and all of them endeavoring to protect the "harmony-in-competition" idea, which, in its last analysis, means an absence of competition. Under conditions as they now exist railroads can by unjust discriminations destroy the business of whole communities and by favoring one manufacturing industry can drive out of business all its competitors. The various railroad groups wield now in the country a power and influence that would have been inconceivable fifty years ago. If they were unrestrained by legislative control, the entire industrial system of the country would be at their mercy.

The acts of 1887 and 1903 and the amendments thereto have proven inadequate to meet the conditions which now exist. There is an imperative demand that more authority be given the Interstate Commerce Commission. When the Commission was created in 1887 it was thought the act creating it was sufficient to enable it to correct existing abuses, but the Supreme Court has decided that, while the Commission has the right to declare that an existing rate is unreasonable, it has no authority to fix a rate that is reasonable and compel its observance. It had authority to declare, and did declare last year, that a rate of $80 per car on peaches from New York to Boston was unreasonable. It recommended a reduction of $50 per car. The carrier, however, reduced the rate $15 per car and the Commission was powerless to act further upon its findings. In this case the carrier need not have made the reduction. It could have stood upon its rights and compelled the Commission to resort to a circuit court in order to compel an observance of its ruling, and before the circuit court could act the movement of this class of freight would be at an end, and even after the court had rendered its judgment a reduction of only $5 or $10 per car could have been made.

The situation is this: The Commission must not only render a just decision, but it must convince the carrier, otherwise the carrier simply ignores the ruling of the Commission, and, as it requires two years to enforce a ruling, the finding of the Commission is not of much practical benefit either to the shippers or the consumers. It therefore becomes now necessary to confer upon the Commission power not only to declare a rate unreasonable, but to declare what is a reasonable rate and to put it into effect within a reasonable time. Each of the three bills reported out of the committee contains provisons which attempt to confer upon the Commission the power to fix a rate and to fix a time when it shall go into effect.

PRIVATE CAR COMPANIES AND TERMINALS.

The present law is inadequate in other particulars. It provides no remedy against the present extortions of the private car companies or the terminal abuses. Any bill which provides no remedy in these particulars is inadequate.

PRIVATE CAR COMPANIES.

Since 1887 the private car companies have become an important factor in the movement of perishable freight. The origin and development of private car companies is described in the Eighteenth Annual Report of the Interstate Commerce Commission. I read from page 11 of that publication:

> The Georgia peach crop is said to have amounted to upward of 4,000 cars during the season of 1904, and these peaches are mainly shipped in a period of six weeks, beginning about the middle of June. Most of the movement is handled by the Southern Railway. The Pere Marquette Railroad moves from points in Michigan along its line approximately 2,000 cars of fruit under refrigeration, the movement covering between the extremes three months, but most of it moving in six weeks. To move the peaches of Georgia would probably require 3,000 cars. For its movement of Michigan fruit the Pere Marquette would need reasonably 1,000 cars. Now these lines might well hesitate to invest the enormous sums which would be required to provide the necessary equipment, when that equipment must lie idle the greater part of the year, but this could be well done by a car company whose cars would be employed in the orange traffic during the winter, in the Georgia peach traffic in June and July, and in the Michigan fruit business during the fall.

On account of such conditions as are described in the extract I have just read, there were some years ago a number of private refrigerator car lines. They have all now become absorbed by the Armour Car Line Company, which now has a practical monopoly of the movement of fruit in large quantities in most parts of the country. The several railroad companies pay for the use of these cars a fixed mileage and each company agrees that it will use no other cars. This compels shippers to use only Armour cars. The Armour Company furnishes the refrigeration and the shipper is compelled to pay most unreasonable rates. The last report of the Interstate Commerce Commission shows that in 1898 this "Armour Car Lines Company" was furnishing cars from Michigan points in competition with other companies. Its charge then for refrigeration to Boston was $20 per car. It now has a monopoly of the business and charges $55 per car. The Illinois Central performs the same service under similar conditions from New Orleans to Cincinnati for $12.50 per car. Referring to the example to which I have just called attention, the Commission in its Eighteenth Annual Report says:

> Illustrations without number like the above might be given. Some of these are extreme, but our impression is that under the operation of these exclusive contracts the cost of icing to the shipper has been advanced 50 to 150 per cent, and that the charges in most cases are utterly unreasonable.

The indications are that Armour & Co. (who own the Armour Car Lines Company) are also engaged in the fruit business. It can not be denied that they are engaged in the dairy business, and that they handle poultry and eggs and vegetables, nor can it be denied that they handle potatoes in Michigan, where re-

frigerator cars are required to move the same during the winter months. They are also, of course, interested in the shipment of dressed meats and packing-house products. The owner of these cars therefore possesses a strong advantage over all his competitors. He can charge what he pleases to others, and to whatever extent the charge made exceeds a reasonable compensation, to that extent the owner of the car is preferred. It amounts to a rebate of that amount of money. I have used the above example, but there are other abuses of like character perpetrated by other car-line companies. These companies contend that they do not come within the provisions of the law as it now stands. Any bill is inadequate which does not extend the authority of the Commission so as to include private car-line companies, and so as to permit the Commission to fix a just rate to be charged by these companies.

TERMINALS.

The terminal road has become an important factor for the preferring of favored shippers. The International Harvester Company furnishes an example of the method of operating private terminals. The old McCormick Harvester Company at Chicago has now been absorbed by the International Harvester Company. Within the limits of the McCormick plant were 17 miles of private track connecting with three railroads, to wit: The Burlington, the Santa Fe system, and the Chicago Junction Railway. By means of these three railroads the McCormick Company delivered to and received freight from all railroads entering the city. The Illinois Northern Company was created to take over these 17 miles of railroad. The stock in the Illinois Northern Company is owned by the International Harvester Company. This company also has switching privileges over 5 miles of Santa Fe track within the city limits and in the manufacturing portion of the city. A large amount of freight is shipped out of the McCormick plant. On account of the fact that the Illinois Northern Railroad connects with all lines entering Chicago it is enabled to demand concessions from the lines to which it delivers freight, and last year it received from certain roads 20 per cent of the through rate from Chicago to Missouri River points. The rate on machinery of the character manufactured by the International Harvester Company is $60 per car from Chicago to the Missouri River. The Illinois Northern therefore receives $12 for switching a car to the railroad making that concession—a payment of $8.50 per car more than the maximum charge heretofore made. A payment of $8.50 per car to the Illinois Northern Railroad Company is a payment to its owners, the International Harvester Company, and to that extent that company is preferred over other shippers. Examples of terminal railroads are numerous—the United States Steel corporation owns 62 miles of terminals at South Chicago, 18 miles at Joliet, 18 miles at Milwaukee, 10 miles at its Union Works, and 4 miles at its North Works. Through a main line 7 miles long from South Chicago to Indiana Harbor it connects with several roads entering Chicago. The company operating its terminals obtains a division of freight on all cars delivered to connecting railroads, for the East and the West, of from $6 to $20 per car. These charges are much in excess of a fair compensation, and amount to a rebate to the United States Steel Company. For this its officers can not be prosecuted under the law. The logical remedy for these abuses is to extend to these terminal companies the operation of the interstate-commerce laws, and place them under the control of the Interstate Commerce Commission.

After eighteen years of work the Interstate Commerce Commission finds itself powerless under existing laws to carry into effect adequate remedial measures. With reference to its limitations in the matter of fixing a just rate the Commission, in its report for 1904, says:

> The Commission may find after careful and after extended investigation that a rate complained against is unreasonable, and order the carrier to desist from charging that rate for the future, but it can not, though the evidence may and usually does indicate it, find and order the reasonable rate to be substituted for that which has been found to be unlawful. It results that any reduction of the wrongful charge amounts to technical compliance, and frees the carrier from any legal obligation under the order. The Commission can issue its order only against the rate complained of; it can condemn the wrong, but it can not prescribe the remedy.
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> No more appropriate language can be used in concluding our remarks upon this subject than is employed by the President in his annual message to the Congress:
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> "The Government must in increasing degree supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. The most important legislation now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rates to go at once into effect, and stay in effect unless and until the court of review reverses it."

Some railroad representatives meet the above argument by saying that rates are lower here per "ton mile" than they are in Europe, and that rates are lower now than in former years. Rates ought to be much lower here per "ton mile" than in Europe—distances are greater here. Rates certainly ought to be much lower than they were several years ago. There has been an improvement in the method of handling freight. Heavier rails are used—larger locomotives can now haul greater loads. The cost of handling freight per "ton mile" has been decreased.

According to Poor's Manual of Railroads, the value of railroad assets in this country in 1900 was $12,000,000,000. He arrives at this conclusion by adding together the par value of the capital stocks and bonds comprising the capitalization or "securities" of the railroads. How much of this value is fictitious and how much consists of watered stocks can not be determined.

Adopting the somewhat violent presumption that there is invested in railroads in money the above sum, and if there are 200,000 miles of railroads in the United States, then there is invested in railroads in the United States per mile the sum of $62,500. If each mile of railroad yielded net 4 per cent on this investment per annum, it would yield $2,500. It must be admitted that a return of 4 per cent is about as good as can be expected on any large investment of funds. The report of the Interstate Commerce Commission made December 17, 1904, shows that the net earnings of railroads per mile in the United States for 1904 was $3,035—nearly 5 per cent per mile—and the report further shows that the net earnings for 1904 were $6,400,000 less than for 1903. If the actual cash invested, plus watered stock and fictitious values, can produce the above return railroads ought to be able to stand a proper adjustment of freight rates, even if it amounts to a substantial reduction.

PRIVATE CARS.

With reference to private cars, the Commission, after an exhaustive review of the subject, make the following recommendations:

> The only way in which a complete remedy can be afforded is by investing this Commission, or some other tribunal, with power to inquire whether these charges are reasonable, and to make them reasonable if found unreasonable. This can be accomplished in two ways:
>
> 1. By making the common carriers responsible to the public in the matter of special equipment and this refrigeration service, if they are not responsible now.
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> 2. By bringing the car-line companies which provide the refrigeration for interstate shipments under the jurisdiction of the act to regulate commerce, and making their charges subject to the determination of this Commission.

TERMINAL RAILROADS.

As a result of years of investigation the Interstate Commerce Commission reached this conclusion with reference to terminal roads. I read from the last report of the Commission:

> The terminal road is, in our judgment, one of the most dangerous means for the preferring of favored shippers at the present time, and we earnestly call the attention of Congress to this situation. * * * The important thing to which we call attention is the growth of these practices. Until recently it is our impression that they have been largely confined to a few instances. To-day they are extending in all directions, and unless checked must soon become general.

The fact that we are considering these questions at all is due to the positive recommendations contained in the President's message, which the majority in this House could not entirely ignore. In his message the President uses this language:

> Above all else we must strive to keep the highways of commerce open to all on equal terms, and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference; the rebate must be stopped, the abuse of the private car and private terminal-track and side-track systems must be stopped, and the legislation of the Fifty-eighth Congress, which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce whereby such property shall by any device whatever be transported at a less rate than that named in the tariffs published by the carrier, must be enforced.

There are other abuses connected with those I have enumerated, and they are almost as important, but I can not undertake now to discuss them.

THREE BILLS REPORTED OUT.

Three bills have been reported out from the committee—the Hearst bill (H. R. 13778), the Townsend bill (H. R. 18588), and the Davey bill (H. R. 17786). Under the rule adopted by Republican votes in this House none of us are permitted to vote for the Hearst bill, and under the same rule we are not permitted to offer any amendments. We must choose between the Townsend bill and the Davey bill. Neither of these two bills, in my judgment, meet the demands of the situation, neither of them comply with the suggestions contained in the President's message. I have prepared a comparison of the three bills reported out for my own convenience in studying the bills and for the convenience of any person who may desire to compare them. I desire to insert it in the RECORD here.

COMPARATIVE ANALYSIS OF HEARST, TOWNSEND, AND DAVEY BILLS—RAILROAD-RATE ABUSES AND HOW REACHED BY THE THREE BILLS REPORTED OUT OF THE COMMITTEE.

| | Hearst bill (H. R. 13778). | Townsend bill (H. R. 18588). | Davey bill (H. R. 17786). |
|---|---|---|---|
| Do they give Commission power to declare what is a just rate and to fix same? | Yes (sec. 1)..... | Yes (sec. 1)..... | Yes (sec. 1). |
| Do they provide a remedy against private-car abuses? | Yes (sec. 5; sec. 6, lines 24 and 25; sec. 7, end of section). | No ..... | No. |
| Do they provide a remedy against terminal abuses? | Yes (sec. 4; sec. 6, line 19). | No ..... | No. |
| Do they provide a remedy against discriminations made possible by changes in classification? | Yes (sec. 4, lines 18 to 29; sec. 5). | No ..... | No. |
| Do they provide a remedy against abuses made possible by change of rates? | Yes (sec. 4, lines 12 to 25). | No ..... | No. |
| Do they extend authority of Commission so as to include part rail and part water lines? | Yes (sec. 2) .... | No ..... | No. |
| Do these bills require connecting carriers to acquiesce in joint rates? | Yes (sec. 3; sec. 4, lines 3 to 13). | Yes (sec. 5) .... | Yes (sec. 3). |
| Do they provide a remedy against canceling schedules for the same locality? | Yes (sec. 6, lines 22 to 24; sec. 8, lines 3 to 14). | No ..... | No. |
| When do findings of Commission become effective? | On date specified in the order (sec. 7). | 30 days after notice to persons affected thereby (sec. 1). | Bill uncertain in this particular (secs. 1 and 2). |
| Do they provide for special courts of review? | Yes (secs. 10 to 18, inclusive). | Yes (secs. 7 to 20, inclusive). | No. |
| Can cases be taken to Supreme Court? | Yes; if constitutional question involved (sec. 13). | Yes; if laws heretofore in force permit same (sec. 15). | Uncertain; language is can go "to any court having proper jurisdiction" (sec. 2). |
| Within what time must Commission determine cases brought before it? | 60 days after case is submitted (sec. 15). | No limit ..... | No limit. |

The Hearst bill, reported out by Mr. SHACKLEFORD and Mr. LAMAR of Florida, two of the minority members of the committee, is the only one of the three bills which even attempts to furnish a remedy for existing conditions. If enacted into law it would, in my opinion, be perfect remedial legislation. It represents the result of years of work and investigation by its author. The prosecutions carried on by him in the courts at his own expense, in the interest of the people, have disclosed to him the inherent weakness of the acts now in force. He has blazed the way where others have followed. The Hearst bill was introduced in this House March 11, 1904. The Interstate Commerce Commission did not recommend legislation along the lines of the Hearst bill until nine months after the introduction of the same. Nearly nine months after the Hearst bill was presented the President, in his message, recommended such legislation as the Heart bill provided for. The Davey bill was introduced nearly a year after the date of the introduction of the Hearst bill. The Hearst bill will be now rejected, but the movement in favor of railroad-rate regulation can not be suppressed—it must go on—and before the end is reached every provision of the Hearst bill will be incorporated in the existing law. The stone which the builders now reject, the same will become the chief head of the corner.

It is a matter of regret to most of us on this side that we can not vote for a more far-reaching and comprehensive Democratic bill than the substitute to which we are limited by the rule adopted here. Eighteen years of experience with the present law ought to give us a better bill than either the Republican measure or the Democratic substitute (the Davey bill).

During each of the last eighteen years our Interstate Commerce Commission, composed of five men learned in the law, with competent assistants, has been working on this question. We have paid to these Commissioners in salaries alone in that period of time $675,000. The total expense to the country of keeping this Commission going for eighteen years wll exceed $1,000,000, and during that time we have not made the slightest progress in the fight. If either the Townsend or the Davey bill should become a law, we would then be just where we started eighteen years ago. These bills only propose to give to the Commission a power that the country thought was conferred by the act of 1887, and which the Commission exercised for ten years and until the Supreme Court construed the act against them in this particular. During the last eighteen years our great trusts have sprung into existence, made possible largely by discriminations of railroads in transportation matters. The mountain has labored and brought forth a mouse. The country had a right to expect, and it does expect, better legislation than is provided in either of these bills. If there is a choice between two such insufficient measures, I prefer the Townsend bill. It is the better measure of the two, and I expect to vote for it. After all, perhaps, the country is to be congratulated upon the fact that there is little chance for the bill which passes this House to go through the Senate during the present session. When Members on both sides of this House go home, and again get in touch with their constituents and find out what they want, they will be ready when they come back in extraordinary or regular session to support better measures than either of these.

I think the Townsend bill is the better bill of the two for the reason, among other reasons, that it provides for an appellate court. We established a short time ago additional Federal courts, and they are now all fully occupied with Federal business. The time of these judges ought not to be taken up in the adjustment of freight-rate matters. The Hearst bill provides for a better court, in my judgment, than the Townsend bill, but the court provided for in the Townsend bill is better than no court at all.

I regard the Davey bill as insufficient in that it does not, in my judgment, clearly provide a method of putting into effect the rate fixed by the Commission. In the first clause the language is, "shall become operative twenty days after notice." What kind of a notice is meant? Who is entitled to notice? How is that question to be settled? The Townsend bill provides that the rate fixed shall go into effect "thirty days after notice thereof has been given to all persons affected thereby." This is a little better. The Hearst bill provides that the rate fixed shall become effective "on and after the date fixed in the order." This, it seems to me, is the best method of all. The second section of the Davey bill provides that when a rate is fixed and "litigation shall ensue because of such decision" the rate shall continue in force until the decision of the Interstate Commerce Commission shall be held to be error by the United States court having proper jurisdiction, but no court taking jurisdiction shall consider any testimony except "such as is contained in the record." What kind of litigation does this section contemplate? Litigation in a State court? How does this affect the provision I have just referred to in the first clause? Does it have the effect of putting the rate into operation within twenty days if litigation commences within that time? The fixing of a rate might indirectly or directly be the occasion of litigation in a State court. Would that put the rate in operation within the twenty days and keep it in operation until the case reached that United States court having proper jurisdiction and was held to be error there? What would be the effect upon the continuance of the rate so fixed if the litigation was of such a character that it could never reach a Federal court? What "record" is meant to which courts taking jurisdiction are limited? Is the record of some State court contemplated? In view of the fact that this bill does not provide for a court of review, it would take four or five years to get the Supreme Court of the United States to pass upon these matters. They certainly require judicial construction. The last three paragraphs of this bill do not help matters any, and do not tend to explain or make clear the time when the rate may be made to go into operation. Believing that a little effective legislation at the present time is better than nothing at all, I will be compelled to cast my vote for the Townsend bill.

I do not agree with the position taken by the gentleman from Alabama [Mr. RICHARDSON] upon this floor when he contended that "Government ownership would be the greatest calamity that could happen to this Government." I deny that what he said correctly represents the sentiment of the Democratic party of the country. If the only legislation we can ever get submitted to this body is the kind of legislation provided for in these bills now under consideration, we are nearer the other extreme than the gentleman from Alabama imagines. The refusal of the majority to permit us to legislate upon terminals makes possible municipal ownership of all terminal roads operating in our great cities. The fight for municipal ownership is now on in Chicago—and the Democratic party there is committed to that proposition. The indications are that we may expect a Democratic victory there in the spring elections and that we may soon see the great city of Chicago owning and operating its street railway systems. This may prove the entering wedge, and if railroads continue their present opposition to remedial legislation, we may be forced to the other extreme, and the present abuses may result in forced Government ownership. The gentleman from Alabama is hardly in touch with

the present radical progressive tendencies of the Democratic party. I believe the legislation now attempted, ineffective as it apparently is, will result in arousing the country to a sense of impending dangers, and that the people will in the near future compel legislation along the lines of the Hearst bill and the President's message. [Loud applause.]

Mr. HEPBURN. Mr. Chairman, I will yield ten minutes to the gentleman from Illinois [Mr. PRINCE].

The CHAIRMAN. The gentleman from Illinois [Mr. PRINCE] is recognized for ten minutes.

Mr. PRINCE. Mr. Chairman, the State I represent in part has had much to do with the regulating of railroad rates. In the early seventies the people of the State of Illinois felt that the railroads and warehouses of that State were pressing rather heavily upon the producers, the consumers, and the shippers. The farmers at that time, who were organized into fraternal societies called "granges," thought that they would take a hand in the regulating of railroad rates. They entered into politics. They elected members of the general assembly. Not satisfied with electing members of the general assembly, they came to the county where I now live, and then lived as a boy, and selected a lawyer of high standing and ability, a Democrat in politics, living in a judicial district of 8,000 Republican majority, and named him as a candidate for justice of the supreme court of the fifth judicial district of Illinois.

On the 2d of June, 1873, he was overwhelmingly elected as one of the justices and took his seat as a member of the supreme court of the State of Illinois. He carried out the views of the people that were back of him in seeking to regulate railroad rates. His presence there was pivotal and potential, and he helped to sustain and maintain the law that was passed by the granger legislature and helped to make it constitutional. That case was appealed to the Supreme Court of the United States, and after a full and fair hearing the opinion of the people as crystallized by this justice of a supreme court was declared to be the law of the State of Illinois, and the law of the State of Illinois was declared constitutional by the highest judicial body in this country. As a result of that, this Democrat, Alfred M. Craig, for twenty-seven years sat with honor and distinction from a Republican judicial district as a justice of the supreme court of the State of Illinois.

When the question of a successor for the late Chief Justice of the Supreme Court of the United States was under discussion, his name was properly presented to the then President, Mr. Cleveland, and, after much discussion, the latter saw fit to name another from the great State of Illinois, and who to-day graces that bench as Chief Justice of the Supreme Court. Had Justice Craig been selected, had he been called upon to preside over that august and dignified body, his decisions, in my judgment, would rank high among the distinguished men who have occupied that position in the years that have come and gone. As a result, Mr. Chairman and gentlemen of the committee, of that discussion that took place in the State of Illinois, it was caught up by the men then in public life. There came up from the great State of Texas Mr. Reagan, and there came in, fresh from the people, and imbued with those ideas, two great governors from two great States, one of them, SHELBY M. CULLOM, now the distinguished Senator from Illinois, and the other, Governor Davis, from the great State of Minnesota. They, along with other men, caught the spirit of this idea, and as a resultant there was given to the public in 1887 the present interstate-commerce law.

For a number of years that law was put into operation. The law gave to those commissioners at that time, as it was then supposed, ample power to regulate and control railways, ample power to fix a maximum rate, and during the ten years that intervened from the formation of that body up to the time that the Supreme Court sheared it of the power to fix maximum rates, there was no discussion, so far as general discussion is concerned, about their exceeding their power as commissioners of interstate and foreign commerce. There was no discussion going on as there is to-day throughout the length and breadth of this great country of ours that they were exercising power that was confiscatory in its nature. But there came a change. These men were deprived of the right to exercise what was believed to be the power that was conferred upon them. And for the last five years there has been no hand to restrain. The railroads have been moving along in their judgment as they thought wise for the interests of their property and for the interests of the public which they represent. And let me say here that they represent a great interest. There are 209,000 miles of railway in the United States; $12,600,600,000 of value in railways; the gross earnings for 1904 were $1,966,000,000. There are more than 1,400,000 people employed on the railways of this country. For every 400 people in the United States there is 1 mile of railway.

One-eighth of the entire wealth of the country is invested in railway property. The gross earnings per mile per capita are $23. The net earnings per capita are $7.67. Every man, woman, and child in this Republic pays yearly, in dividends, $2 as a result of their riding upon the railroads of this country.

Mr. HILL of Connecticut. Will the gentleman allow me to ask him a question?

Mr. PRINCE. Certainly.

Mr. HILL of Connecticut. The gentleman is doubtless familiar, and I am not, with the condition of affairs from 1887 to 1897, while the Commission possessed this power that we propose to reinvest them with. Did the operation of that power in the hands of the Commission generally in any way relieve the country of these discriminatory and unjust charges, and so forth, or was it not a matter of fact that they were more flagrant while that power was in the hands of the Commission than since?

Mr. PRINCE. My understanding is it generally did relieve the conditions then existing, and my further understanding is from the record that the railways themselves never felt the oppressive hand of this Interstate Commerce Commission, because by steady growth they increased their properties and the value of their properties. The records will show that they advanced pari passu with the growth in values and in wealth of this country, as, in the language of Speaker CANNON, "We went forth in leaps and bounds in the days gone by."

I am not here to criticise the railroads. I think, as I have stated here, that they are an integral and potential factor in the development and growth of our country. They are as essential as our shippers; they are as essential as our consumers and producers. They represent here, as I have said, one-eighth of the value of all the capital of the Republic.

Mr. COCHRAN of Missouri. May I inquire of the gentleman if in arriving at the value of the railroad, as you have stated it, at one-eighth, you accept their present capitalization as the measure of it?

Mr. PRINCE. I do; because I know of no better way of getting at it.

Mr. COCHRAN of Missouri. I know of no poorer way.

Mr. PRINCE. Well, make your speech and state what the value should be. [Applause.]

The measure now under consideration is a compromise one, It is the best we can hope to pass at this session of Congress. I believe it will work no harm to the capital invested in railroads. In truth, I believe it will work much good for the railroads. It is curative and remedial legislation. It restores to the Interstate Commerce Commission the powers originally supposed to be conferred upon them. If I thought this measure was destructive of railroad interests I would not support it. I have no sympathy with the views of those who believe in destroying corporate wealth. Railroads are public highways. They possess the power of eminent domain. They are and should be subject to governmental control. They are creatures of the law. The creature should not be more powerful than the creator. Railroads have rights. The public have rights. This measure will safeguard the rights of all concerned. It is moderate and temperate legislation. We had better pass this measure than fail to pass any. A failure to pass this measure may compel us later on to pass a more drastic measure, which will work great harm to all affected thereby. I shall favor this measure, not because I regard it perfect, but because I regard it a step toward conservative and needed remedial legislation. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. HEPBURN. I yield ten minutes to the gentleman from Nebraska [Mr. HINSHAW].

Mr. HINSHAW. Mr. Chairman, the greatest evil in the matter of freight rates from which the people of this country now suffer is caused by the skillful devices under which favored shippers reap illegal advantage and by which the carriers are practically compelled so to discriminate against the small shipper and producer who markets his own product as to amount to a destruction of their business and to enhance unduly the profits of the large transporter of freight. These discriminations were formerly effected by direct rebates, but since the enactment of the Elkins law and similar measures it has been found necessary to employ the devices of the private car line, excessive charge for refrigerator cars for meat, dairy, poultry, and vegetable products; the use of short privately owned switches and terminal facilities, for which an unjust and unequal percentage of the through rate is charged by the shipping owner, amounting in many instances to 20 per cent of the rate charged for a long haul of many hundreds of miles. This evasion of the law has been practiced by the many corporations controlled by the Armours, Swifts, and other gigantic packing interests and by the large fruit growers of many States and is

usually accomplished by exclusive private contracts with certain railroads by which those railroads are given either so many cars per month for shipment or the entire product of the corporation.

The Interstate Commerce Commission, under the act of 1887, has power to prohibit a difference in charges "by any special rate, rebate, drawback, or other device," and the Elkins amendment prohibits "any device by which property may be transported at a less rate than that named in the tariffs or whereby any other advantage is given or discrimination is practiced." In November, 1904, the Interstate Commerce Commission decided that "Where excessive divisions of rates are granted by a carrier to another carrier owned and controlled by a shipper, for the purpose of obtaining the traffic of that shipper, they benefit the shipper and operate as a rebate or other device to cut the tariff charge in violation of the law," and that, in the case then decided, a division of 10 per cent of the rate from Chicago to the seaboard and 20 per cent from the Missouri River were grossly excessive and came within the inhibition of the act. The difficulty heretofore has been that, while the Commission had power to declare a rate unreasonable and that certain devices were in effect rebates and prohibited by the law, yet under the construction placed upon the act by the Supreme Court in 1897 the Commission was denied the power to enforce its findings, so that all of these acts were practically nullified and without force.

In the Townsend bill, now under consideration, it is sought to confer upon an enlarged commission power not only to fix a reasonable rate in the place of the one declared to be unreasonable or unjustly discriminatory, but also to declare any regulation or power whatsoever affecting the transportation of persons or property which is unreasonable or unjust unlawful, and to declare and order what shall be a just and reasonable practice or regulation for the future, and the order of the Commission shall take effect within thirty days after notice to the person affected. This provision, if upheld by the courts, will, in my judgment, right the existing wrong and will place within the reach of every producer and shipper a weapon by which he can compel with expedition both the establishment of a reasonable and just rate for transportation and also prevent the giving of rebates, the excessive charge for private and refrigerator car service, and the discrimination in favor of favored shippers by reason of their ownership of valueless terminal facilities.

There are 50,000 private cars now in operation, mostly owned by packers. There are a few private cars owned by car companies not engaged in shipping, but who lease their cars to shippers and to railroads. It is estimated that the private refrigerator cars cost from $1,000 to $1,200 each, while probably ordinary freight cars cost about $600. The vast profits to the owners of the private-car lines can be understood when it has been revealed that ordinary freight cars are leased at 20 cents per day, while private beef and other refrigerator cars, making, by contract, 135 miles per day, are paid east of Chicago at the rate of three-fourths cent per mile, and between the Missouri River and Chicago at the rate of 1 cent per mile, or from five to seven times as much as is paid for the freight car. These cars are paid for by the railroad, and hence eventually by the shipper and consumer, whether loaded or empty. The mileage received from the railroad by the owner of these cars is large enough so that he can pay back to the favored shipper, which usually is himself, one-half the mileage. It is apparent that this is nothing but a rebate in disguise, and operates to the utter destruction of the shipper who does not own a line of private cars.

Mr. SHACKLEFORD. I want to ask the gentleman if the bill you are supporting over there contains any regulation of the private-car lines?

Mr. HINSHAW. I think so, and I am coming to that now.

Those railroads, and there are some, which rebelled against this iniquitous system have found themselves deprived of the business monopolized by the great packing houses, which engage not only in shipping and packing dressed meats, but likewise almost monopolize the dairy, fruit, and vegetable business of the country, and operate on a gigantic scale in grain as well. The result of this perfected system has been that the shipping concerns have not only been able to dictate freight rates, but likewise practically to fix the price of commodities to producer and consumer alike.

In addition to the mileage rate the private-car companies have usually been able to obtain a division of the regular freight rates of from 10 to 12½ per cent. Another device of great advantage to the private-car owner is the icing of refrigerator cars, which the railroad is usually supposed to do, but which the private-car owner generally contracts to perform for 12½ per cent of the refrigerator rate. This makes it impossible for a private shipper from California, Florida, or Georgia to employ any other service but the private-car lines.

It is believed that this bill will reach these difficulties; that the court of transportation will have the time to hear and determine with speed all appealed cases. Except in extraordinary cases, no evidence will be admitted in the court of transportation not heard before the Commission. We know that the President will seek for the Commission men of superior ability and wide experience. [Applause.] The people of the United States have unbounded confidence in the good judgment and, above all, in the integrity and patriotism of their Chief Executive. We are assured that he approves this legislation. The people of this country seek relief at the hands of Congress. Their petition should be heard. [Applause.]

The millions who live in the valleys of the Mississippi and Missouri must seek for the vast surplus of their products markets in the East and South, at the great seaboard cities of the country. The freight rate, even if justly and impartially levied, absorbs a large percentage of the value of the products. But if to this is added the discriminations suggested by greed and enforced by the accumulated millions of organized capital, the small manufacturer, the stock raiser, the farmer, the diminutive shipper has no chance for his industrial life in the unequal contest.

The President knows that he owes his election to the millions of the plain, common people of this country, and he proposes, to the extent of the powers of his great office, to afford them relief. To this worthy and patriotic object we should all be willing to lend our best efforts and grant a full measure of devotion to the best interests of the people of the whole Union. [Loud applause.]

Mr. HEPBURN. I yield fifteen minutes to the gentleman from Pennsylvania.

Mr. WANGER. Mr. Chairman, the purpose of the pending bill—alike of that reported by the gentleman from Michigan [Mr. TOWNSEND] on behalf of the majority of the Committee on Interstate and Foreign Commerce, and that offered as a substitute by the gentleman from Louisiana [Mr. DAVEY] on behalf of the minority of that committee and of the membership of this House—briefly summarized, is to secure a "square deal," alike for the shippers of the country and therein of producers and consumers, without injury to the great railway interests and other common carriers. The leading features of each bill is to confer upon the Interstate Commerce Commission the power and authority to revise after full hearing a rate fixed by such carrier for the transportation of a given product or of any regulation or practice which may be established by the carrier in connection with such transportation.

It is a great question of possibly immeasurable significance, and it is only because after years of study and investigation it seems to me to be essential to the welfare of the country, to be entirely warranted by law and reason, and to be capable of amendment or of repeal in the event that experience shows its incompleteness or its impolicy, that I give my hearty concurrence to the adoption of some measure conferring the authority, and believing that the measure reported by the majority is more complete and wise in detail, that I give my preference to it and shall vote against the adoption of the substitute and in favor of the passage of the Townsend bill.

In view of the many and clear declarations of the Supreme Court of the nation in the interpretation of the interstate-commerce act since 1887 and of other like legislative enactments, it can not be questioned that Congress has full authority to declare and determine what are just and reasonable rates, providing there is no confiscation of private property, and to delegate that authority to a commission.

Undoubtedly it would be preferable if we could formulate a statute clearly defining what are just and reasonable rates, practices, and regulations, but as the complex nature of the subject and its multitudinous details baffles the ingenuity of man in formulating laws which shall meet every item, incident, and phase of the question, it is essential if we wish to provide for a more effective ascertainment to delegate the authority, and the only existing legal body appropriate for the duty is the Interstate Commerce Commission.

That Commission has been the subject of serious and severe criticism and has cost the nation a vast amount of money in salaries and expenses; but it has done a great work and been fully worth to the country far more than the expense involved. Its members have been able, patriotic servants of the people, and its intricate and perplexing duties have generally been discharged with singular ability and freedom from bias or par-

tiality. It may not have done all that with present knowledge we can see would have been possible to justify the sanguine expectations of the public and of its creator, but having to blaze a way instead of tread a beaten track the wonder is that it has done so much that has been eternally right and has so rarely fallen into error.

Mr. S. H. Cowan, the able attorney of the Cattle Grazers' Association of Texas and other western cattle associations, says:

THE ACT TO REGULATE COMMERCE HAS BEEN OF GREAT VALUE.

That it has been of inestimable value no one familiar with the facts can doubt. The accumulated information contained in annual reports of railways and the records and statistical data covering, as they do, sixteen years of the marvelous railway development of the country in construction, consolidation, and operation of railways, as well as their financial operations, comprises a history which otherwise it would be practically impossible to obtain. Its value, therefore, can not be overestimated, because we would be groping in the dark in any attempt at railway regulation without it. It has been, therefore, equally valuable to the railways themselves and to the public. The same may be said of the tariffs on file with the Commission for the same period, comprising a history of rates otherwise unobtainable.

In addition to this, volumes of testimony and findings of the Commission in the many important hearings which it has held, in which opinions have been rendered, often by very able men, furnish an encyclopedia of learning upon the subject to which anyone may resort who desires to become educated upon the subject, but for which we, the public, would be like a schoolboy starting in the primer, so far as this subject is concerned.

And, again, the questions which have arisen in the courts, fought out by lawyers of great ability and decided by judges and courts eminent for probity and learning, have blazed the way and placed by the roadside landmarks of inestimable value to guide both the public and the railroads when confronted, as we are, with the question of appropriate railway regulation, which our worthy President emphatically declares to be the most important question before the American people.

So, therefore, to him who says that the act to regulate commerce has been a failure or a worthless enactment let it be said he has not fairly measured it.

It is no uncommon thing to read in the papers and to hear from the platform declarations that the law as it stands is worthless, but what has been said shows that such statements are incorrect. That the law has been discovered to be seriously defective is undoubtedly true, yet it affords some remedy, though very imperfect, and is being constantly resorted to as the only means of railway regulation. Many of the Commission's decisions are complied with, and the fact that it may be resorted to with a fair show of success, after protracted litigation, has no doubt some beneficial restraining effect. On the whole it may fairly be said to have been of very great benefit to the public.

The members of that Commission believe, and the representatives of most of the commercial organizations who have led the battle for more equal and fair rates confirm the theory that the one great weakness of the Commission is its lack of authority under the present law in finding that an existing rate, practice, or regulation is unfair or discriminatory to declare what is just and reasonable for the future and to secure compliance with that declaration without undue delay or multifarious litigation.

This theory is challenged by some shippers, commercial organizations, and probably most railway magnates and holders of railway securities. My esteemed constituent, Mr. Philip Godley, chairman of the committee of transportation of the American Warehousemen's Association, member of the National Board of Trade, and conservative business man, voices the opinions of a large part of the conservative citizenship of the country in a letter which I shall print with my remarks. I respectfully dissent from his conclusion that the demand for governmental supervision of transportation charges, practices, and regulations is analagous to the demand of several years ago for the free and unlimited coinage of silver, although it may be conceded that a considerable part of the clamor for the present proposed legislation, like that upon the coinage question, comes from what they termed the explosive, oratorical elements of our citizenship. But the demand is also made by men of the utmost conservatism, and above all seems to be warranted by past and present experience and conditions and to be indorsed by thoughtful publicists, including a considerable number of broad-minded, patriotic heads of great railway systems.

That able president, A. J. Cassatt, esq., of the great Pennsylvania Railroad Company, has not only announced his adherence to the proposition now, but took the position at least three years since that governmental revision and regulation of transportation charges, practices, and regulations was wise and inevitable, and when we consider the problems with their attendant circumstances and conditions, how is any other conclusion possible if anything like a square deal is to be hoped for or enjoyed?

That great magnate, Mr. James J. Hill, who has done so much for the development of the Northwest, and especially of one of its leading railway systems, declares, as does Mr. Godley and many other sincere and fair-minded citizens, that the only thing necessary to relieve the situation and protect producers and consumers is to stop rebates and discriminations. There can be no question of the vice and crime of those practices, and possibly the detection and prevention of secret rebates can be as completely done under the 1903 amendment of the interstate-commerce law as under any legislative enactment; but when it comes to the question of unfair discriminations, while they may be partially avoided under that amendment, there will not be a reasonably early avoidance of their destructiveness so long as we do not legislatively determine, either ourselves or by a commission, what are the just and reasonable rates, practices, and regulations under which the commerce of the country must be transported.

When we consider that through their inexplicable, but none the less effective, control of the rates of transportation of dressed meats at a figure far below the rates charged by the railway companies for transporting live cattle, that the great meat-packing concerns have been able to largely fix the price of cattle, which must be accepted by the cattle growers of the West, and the price of dressed meat, which must be paid by consumers in the East, we can not fail to understand that a serious disproportion in rates, although they may be public and in accordance with schedules filed and exhibited, is what keeps the cattle grower of the West from putting his product upon the eastern markets in competition with the meats dressed by the great packers, and this is but illustrative of many other commodities, the consumers of which can not freely and fairly deal with the producers because of the latter's disadvantage in not enjoying as reasonable rates of transportation as the middleman of almost exhaustless resources, who has determined to buy low, haul cheap, and sell high.

One of my colleagues tells me of rich coal lands owned by his constituents, which they may not develop because of preferences given by the railway which traverses his district to companies in which some of its officers and shareholders are interested in the matter of sidings and the supply of cars.

It is not to be supposed that undue preferences are given or unduly low freight rates accorded to concerns and localities because of the interest of the traffic managers who fix the rates, practices, or regulations to favor concerns in which they are interested in very many instances, and just why they are given is in some degree and possibly most instances inexplicable, at least to one not cognizant of all phases of the transaction. But it is generally declared by the principal traffic men that it is better to haul freight at a low rate than not to haul any, and when the enormous output of a corporation like the United States Steel Company may be diverted from the railway system best situated and equipped to transport it to a different line, probability is lent to the rumor that Mr. Andrew Carnegie was permitted to dictate the rates to be charged upon the output of his mills and furnaces as the only means of avoiding the construction of a parallel competing line of railway between the two largest cities of one of the greatest States of the Union.

If this coercion occurred it may have benefited such competitors as Mr. Carnegie had in and near by Pittsburg, but, assuming the forced rates to have been unduly low, it undoubtedly compelled the imposition of higher charges upon other competitors, other classes of freight, and between other points of shipment along the same railway.

It is no wonder that Mr. Hill and others ask protection from that form of coercion and will rejoice to see all discriminations prevented by law, so as to not to leave it in the power of anybody save his board of directors and the diminishing number of his competitors to determine the charges his company shall exact. But if the time-honored doctrine that no man is a safe judge in his own case continues true, it is not fair that as between carrier and shipper the determination of the former's compensation shall be determined by the former alone with the solitary restraint against rapacious exactions being the destruction of the shipper's business and his ability to furnish freights to the carrier.

It is a phase of human nature for each to believe that he is inadequately paid, and when he can fix the price for his services to continually advance his compensation and interest in railway securities will surely not destroy this tendency and substitute a broad humanitarianism in the case of all carriers of freights and passengers. It is suggested against the passage of these bills that they are the first step in the ownership and operation of railways by the Government, but it seems to me that the assumption of rate supervision by the Government is the removal of much of the foundation of the demand for Government ownership. When only a reasonable return can be exacted for the service rendered the great body of the people will more emphatically than ever favor the operation of the great instrumentalities for travel and exchange of commodities by private associations rather than by a great army of office holders; but if we confess that these private associations are beyond effective control, so long as they own the railways and vessels there will be powerful accentuation of the demand for the taking over by the Government of the instrumentalities of commerce and their entire operation by legally designated public servants.

Nearly all of the States provided in the incorporation of railways and similar companies, or by subsequent legislation, that their charges should not exceed a certain figure. And not only in the States, but in England and other countries, in some instances, for centuries the price of bread and other necessaries of life has been fixed by law, without in any instance leading to the manufacture or purveying of those articles by the government.

It is suggested, in opposition to the proposed legislation, that the value of railway securities may be diminished and public confidence in them for investment be shaken, and in this connection there is manifested one of the most beautiful traits of our imperfect nature. In chivalric tenderness we are reminded that among the holders of railway securities are widows and orphans. If all widows and orphans, or the majority of them, held railway securities, or if, however limited the number, more of them did than the number who eat meat and use the other necessaries of life, the price of which has been made unreasonably high by unrestrained rates, practices, and regulations, we might well pause; but for myself I think there are more widows and orphans whose comfort is diminished by unreasonable carrying charges upon food and fuel than of those who enjoy the felicity of collecting interest or dividends from carrying companies.

And why should the stability of those investments be affected? As has been repeatedly stated during the ten years the Interstate Commerce Commission assumed the authority to fix maximum rates for the future, nobody became panicky from the apprehension of confiscation or serious diminution of carriers' earnings. The impossibility of investigating and speedily determining many rates or series of rates, regulations, and practices is no less an argument against the hope of an early Utopian reformation than it is a guaranty against hasty, violent revolution; but there is just reason to believe that the conferring of the authority in the manner declared in the measure bearing the names of my esteemed colleagues, TOWNSEND and ESCH, really a consolidation of features of many bills, and in the main generally similar to the bill introduced by the distinguished chairman of our committee [Mr. HEPBURN], will lead to the correction of many cases of unfairness and to the conservative and judicious ascertainment of the true basis for rates, practices, and regulations, to which the traffic departments of the carrying companies of the country will find it expedient to harmonize their schedules of rates, their practices, and their regulations.

It will be recalled that in the fierce agitation against the Southern Pacific Railway Company waged in California a few years since it was claimed that the company charged traffic all that it would bear. The charge was doubtless as exaggerated as the rates and practices in many instances were unreasonable. But it is somewhat startling to learn from railway testimony that the value of the service has little consideration in determining rates.

In May, 1902, Mr. A. C. Bird, then third vice-president of the Chicago, Milwaukee and St. Paul Railway Company, who appeared before our committee, was asked by our chairman:

I would like to have you inform the committee, if you will, what are the elements of cost that are considered by you when you make a schedule of rates.

Mr. Bird answered:

I have been engaged in the preparation of tariffs for many years, and I have never yet on any occasion been able to prepare a schedule of rates with any reference whatever to the cost or value of the service. In every case throughout my experience there has confronted me, first, what are the competitive conditions that fix the rates for you arbitrarily? And in the sixty-six hundred miles of railway which I represent I want to say that substantially there is no local traffic. There is not a station from or to which a rate is made that is not affected more or less directly with competition, so that you may not use your judgment as to what the service is actually worth or what it costs.

If all parts of the country had fair competition, there might be no occasion for the further amendment of the interstate-commerce law. Nobody will contend, however, that that is the case, and John D. Kernan, esq., in 1902 instanced a rate per hundred pounds to our committee from Minneapolis to Utica, 1,000 miles, 3 cents less than the rate upon the same article from Utica to Forestport, 4 miles, and forcefully said that the fair rate could best be determined—

by the railroad company if the railroad company acted judicially in the matter; but every man acts for his own interests in the matter, and therefore the railroad manager in considering the question does like a great many of us—he looks at one side. And I never knew but one railroad man in this country who was able to take in both sides of the question.

The following colloquy then occurred:

Mr. MANN. Is it not to the interest of the railroad companies to increase the manufacturing interests on their lines?
Mr. KERNAN. You would suppose so.
Mr. MANN. Is it not?
Mr. KERNAN. Yes, sir, it is; and it is bad policy if they do not do it; and yet you would be surprised to go up and down lines which I could point out in New York State to see how absolutely blind they are to that.
Mr. MANN. With all your knowledge of railroad rates—and you have given more study than anybody on the Interstate Commerce Commission to them——
Mr. KERNAN. Oh, no, sir.
Mr. MANN (continuing). Or any man in the country——
Mr. KERNAN. I do not think so.
Mr. MANN (continuing). I will ask you, leaving out Forestport altogether, you are not able to tell what would be the proper rate from Minneapolis to Utica?
Mr. KERNAN. Not unless I had all the facts. I have not got them. I never bothered about my little rate. This is just an illustration of the difficulties, and one of those relative things that has got to be considered and determined.
For instance, you take the question of two farmers living 100 miles from Chicago, one on one railroad and one on another. They are both competitors for the foreign and domestic market. They are on different lines, and those lines are in different States. Now, the farmer at one point is charged for carrying grain to Chicago 3 cents a bushel. The farmer on the other road is charged 1½ cents a bushel. Now, that difference of 1½ cents a bushel, you see, wipes out to a certain extent the business of the farmer who has to pay 3 cents. You can not deal with that situation any way except through the interstate-commerce law, which can bring both of these rates before it and enter into a consideration of these relative rates, and fix them in the proper relations toward each other.
It may be that the interests of one road, and the form of business of one road, may permit a higher rate. If that is so it will have to stand. But it may be that of these rates one is higher and the other lower than it ought to be. Those things have to be met by the power of somebody who has power to fix relative rates, and it is relative rates in this country that are troublesome.
Of course, on the 1st of January, 1900, the railroads changed rates on 854 different articles, and they lowered them on 6 and raised them on the rest of the articles. The increases were from 100 per cent down to 15 per cent. The average was 25 per cent.
Now, after the long period of depression that the railroads have been suffering from I do not think that was an excessive rise in the rates, and the only thing in those rates is that it should be considered by somebody with authority and ability and training to go into the consideration of the relative fairness as between competitors at different points and upon different roads.

Within three weeks Mr. Bird, now vice-president of each of the railroads of the West and Southwest, known as the "Gould system," told our committee:

The making of rates is not an exact science. There is not a tariff in the United States, according to my best belief, that has been made on any scientific basis. * * * The fact is that rates are made by some comparison compromise and competition, and those are the underlying portions that determine what the rate shall be. * * * I have never known a case in forty years' experience where in the adjustment of rates the capitalization of a railroad was taken into account.
Mr. TOWNSEND. Now, would it not be safe to intrust these interests to a commission having as much knowledge as you have, an impartial commission, as it would be to trust the people's rights entirely with the railroad?
Mr. BIRD. That may be so; I do not deny it. * * * A rate may be so low that it will not contribute fairly to the general expenses of the company. It may be so low that if applied as a basic rate the whole traffic would be unremunerative, but at the same time it might be big enough to more than pay the actual cost incident to its own transportation and thus contribute something toward the general expenses of the company. It has been held frequently, I think first by Judge Cooley when chairman of the Commission, that that was a correct view of the subject. I can not state cases in detail, but I am quite certain the same opinion has been announced by some of the judges of the United States courts. I am not sure on that point. It is a fact that the railway companies have proceeded on that theory, more in the past than recently, and for this reason: Rates made under such circumstances have been taken and have been regarded by the State and interstate commissions as a voluntary act, and therefore a just criterion as to the reasonableness and fairness, and such rates have been used often for the purpose of making other rates, and the practice, although it continues to such extent, is not as general as it was, because it is considered hazardous to do so. There was one limitation that I should have put upon that. The opinion among transportation men has been that if the rate paid more than the actual cost incident to its own transportation, and did not unfavorably affect other rates, then such low rate might profitably be made.

The last statement forcefully sustains the view that, with the exercise of the power to fix definitely just and reasonable rates, railway companies will cease, largely, to grant unduly low rates from the well-founded apprehension that they will be regarded by the Commerce Commision, and by the courts in reviewing the action of that Commission, as a criterion to determine the general standard of rates. And the hope becomes reasonable that something approaching an equitable and scientific adjustment of rates will be attained by virtue of the proposed legislation.

It is argued, in opposition, that there may be a too low standard of rates fixed, whereby liberal wages to railway employees, the best equipment for conducting business, and the remunerative return upon the capital invested will be denied to carrying companies. The limitation upon our authority, imposed by the Constitution of the United States, which prevents the taking of property without adequate compensation, ought to be ample protection in this respect. There seems to be a great misconception of the term "confiscatory rates." From many expressions the meaning in the popular mind is largely that only such rates as actually take from the capital and physical property of the carrier are "confiscatory." The error of this conception is that a carrier is entitled to just compensation, and any rates which deny that is confiscatory.

In the legislation we delegate to the Commission the legislative authority to declare just and reasonable rates; but if the Commission errs, the power, under the Constitution, remains in the transportation court and the Supreme Court to find, judicially, that the fixed rate is, in fact, confiscatory of a part of the just compensation due the carrier for the service, considering its character, its cost, and the fair income which the capital invested should have, and the erroneous action of the Commission is enjoined, and the latter may then determine, in accordance with the judicial finding, the actually just and reasonable rate.

My able friend from Alabama [Mr. RICHARDSON], opposing the problem of a central court to pass upon these questions, yet favored the determination or review of the action of the Interstate Commerce Commission by the circuit courts of the country. That might be very well if we settled what just and reasonable rates are, or if all the circuit judges held uniform opinions upon the problem. But as they do not, as there is no general rule determining exactly what just and reasonable rates are in each instance, it is far more advisable that we should have one court, made up of judges from five different circuits over the country, passing upon that problem, than that we should have a different rule laid down in each of the nine judicial circuits of the United States—or worse, in each of the more than 100 circuit courts.

This central transportation court, dealing with all the appealed problems which the Interstate Commerce Commission shall determine respecting rates, practices, and regulations, will surely become an expert tribunal, and there ought to be a reasonable confidence that its decisions will be more nearly accurate than the decisions of a circuit court which may in years have but only one case of the kind before it. All circuit judges are probably able, but few of them are experienced in transportation problems, and with possibly a different finding of what is just and reasonable in a large number of the courts of the country there would indeed be a practical defeat of the leading purpose of the legislation. The courts would have nothing to do with the problem of whether the legislation of the Interstate Commerce Commission was wise. It would only be with the question of whether it was in accordance with law, including its reasonable or confiscatory character. If the Interstate Commerce Commission fixed a standard of compensation which the people of the land believed to be either too high or too low, Congress would be the body to determine whether that standard should be raised or lowered, and that action by Congress, like all legislation, would again be reviewable by the judiciary as to whether in fact it was confiscatory.

There are too many shortcomings and imperfections in the proposed substitute to make it in any degree comparable to the majority measure. Its provisions are indefinite in many respects, and its express prohibition of the power of the Commission to raise the rate, possibly fixed by a bankrupt corporation in guerrilla warfare with its more generally just competitors, or where that rate gives an undue advantage to a certain interest or monopoly over its independent competitors, entirely excludes it from consideration by those who hope to produce better conditions. The case was cited by Commissioner Prouty wherein the case of rates from Cleveland to New Orleans and from Chicago to New Orleans, it being agreed that the charge on oil from the first-named cities to the latter was justly and reasonably the same and just and reasonable in fact, and was the same to the Standard Oil Company and to its independent competitors in Cleveland, who competed in the New Orleans market, that the Standard Oil secured a reduction in the rate from Chicago, where it had refineries but its competitors did not have refineries, to New Orleans, and thereby secured a monopoly of the New Orleans market. There was no secret or other rebate in the transaction, and the instance is a persuasive argument for the power to revise rates upward as well as downward.

It is argued by representatives of the railways that the Interstate Commerce Commission, by reason of the discharge of its preliminary legal duties to investigate abuses and cause their punishment as well as correction, may become biased and fail in the judicial quality in determining what just and reasonable rates are. No instance is cited where that Commission found rates to be unjust and unreasonable which a reviewing court declared was a confiscatory act. There may be sound logic in the suggestion, and I fail to see why the functions of the spy or the prosecutor are essentially incident to the rate-revising function.

It would seem that the investigation of complaints might appropriately be made by the Attorney-General or the Department of Commerce and Labor, and evidence of infractions of the law having been secured that prosecution should be instituted in the proper United States court without the Interstate Commerce Commission having anything to do with the prosecution, and the Commission being a great legislative commission to consider all the questions affecting transportation, and in calm, unbiased manner determining what in each instance of complaint requires revision. The Commission could have the benefit of all the testimony taken, no matter by what Department of the Government, and would doubtless find abundant employment in the exercise of those legislative functions and enjoy in much greater degree the confidence both of shippers and of carriers that its actions were fair and accurate, and subsequent controversy in the Supreme Court (to which appeals from the action of the Commission might properly be limited) would probably be reduced to the minimum. With this amendment of the law there would be no need for a court of transportation; certainly none until experience proved the contrary.

It is evident that there can be no legislation without the surrender of individual opinions, and the opportunity for amendment having also been deemed fatal to the possibility of legislation at this session, I shall, while far from satisfied with many features of the pending measure, vote for its passage under the conviction that it is a step in the right direction and that practice under it, in the event of its enactment, will develop the further legislation essential to that condition we all desire—the promotion of the prosperity of our common country and the protection of every person and corporation in the land in its just rights and fair opportunities, without extortion or discrimination from or by any other person or corporation in the transportation of 80,000,000 Americans, their products, and needful commodities for life and trade. [Applause.]

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APPENDIX.

PHILADELPHIA, *February 6, 1905.*

Hon. IRVING P. WANGER,
*Washington, D. C.*

DEAR SIR: It has been my privilege, as well as duty, to study the relations between shippers and carriers since my connection in 1897 with the prosecution before the Interstate Commerce Commission by the American Warehousemen's Association of fifty-two of the leading railroad companies of the United States, which resulted in the cessation of discrimination through the granting of concessions in the way of unlimited free storage in terminals to the large shippers, and which action produced the four-day rule for the removal of freight from carriers' stations.

More recently this study has been continued by reason of being one of the committee on transportation of the Philadelphia Board of Trade and chairman of the transportation committee of the American Warehousemen's Association.

I have no alliance, affiliations, or interests in or with railroads to influence my judgment or position on the question of Government control of rates.

On the question of giving the Interstate Commerce Commission any power to make rates there is, I think, considerable want of understanding in the minds of the public, and would, I consider, be a dangerous power to grant. The craze on this question, which seems to be overrunning the country and the public press, might not improperly be likened to the free-silver craze of a few years ago, and is as much misunderstood as was the free-silver question. It is comparable also in another respect—that both these questions originated from self-interest. The silver question was begun by the owners of silver mines and the rate question originated with the Interstate Commerce Commission itself.

In the proposed legislation and, as I understand, in all bills which have been under consideration the two questions have become mixed. Everybody is agreed that all rebates, drawbacks, discriminations, concessions, or special privileges should and must be stopped. There is no difference of opinion on this point, but the question of giving the Commission power to declare rates "unreasonable" and to name what they may assume to be reasonable rates is another question, and a dangerous doctrine to put in force, and but a step to the next proposition, "Federal ownership of railroads." I have yet to hear or see any evidence that rates are unreasonable, though rates might be discriminatory, either or both, as between shippers or between localities; but I fail to see that the Commission should have power to declare that rates are anything more than discriminatory. I would therefore suggest to your thought that any bill before the Congress might be amended by changing that word "unreasonable" to "discriminatory," so that the Commission might have the authority, if they found any rate or rates to be discriminatory, either as between shippers or between localities, to set aside such discriminatory rate, and that they might then say what rate would not be discriminatory.

I think this question needs to be more carefully considered by the people generally before legislation should be enacted, and I believe that it would be better for the country at large that any enactment should go over to the next Congress.

The one great mistake that was made by the same class of people and the same sections of the country who are now advocating the rate-making power was in opposing legislation giving the railroads the right to make "traffic agreements" under the control of the Interstate Commerce Commission, and I believe it to be largely because the railroads were prohibited from pooling that there has arisen the great evil of rebate and discriminations. It is impossible to compel competition and at the same time prevent discriminations, and in self-protection the railroads were forced into combinations in the shape of "community of interest," so called.

The Elkins rebate law, if rigidly enforced, would, I believe, be found all sufficient to stop discriminations, as it provides punishment to the receiver as well as the giver of rebates.

Yours, very truly,

PHILIP GODLEY,
*Chairman Transportation Committee,*
*American Warehousemen's Association.*

[Mr. STEVENS of Minnesota addressed the committee. See Appendix.]

Mr. DAVEY of Louisiana. I yield an hour to the gentleman from Georgia.

Mr. ADAMSON. Mr. Chairman, ever since the courts emasculated the long and short haul clause of the act to regulate commerce and destroyed the efficiency of the Interstate Commerce Commision by ruling that it had no delegated power to make valid orders affecting transportation, the people have been demanding remedial legislation to carry out the purposes of the law. The regulation of carriers by Government is not a new experiment. Many of the States have effective commissions and laws. As the States charter and clothe the corporations with quasi public functions, both the right and duty devolve upon the State to protect the people by controlling and regulating the exercise of those functions, rights, and powers.

Neither the privileges granted nor the control exercised can extend beyond the borders of a State. The framers of our Constitution, however, made ample provision to meet all the necessities of interstate commerce. Although no railroad had ever been dreamed of, those giant minds, referring all things to general principles, liberal, correct, and eternal, realizing the conditions and inevitable development of our country, and the genius of the splendid government they were forming for ages of beneficent operation, provided that the States delegate to the Federal Government the power and duty "to regulate commerce among the States, etc.," so that where the power and duty of the States as to commerce end the jurisdiction of the Federal Government attaches, with powers that are plenary and duties that are imperative.

They relate not exclusively to railroads, but apply to every instrumentality, everything and everybody, in any wise connected with business intended to affect more than one State, District, or Territory. The man who peddles with a pack, the wagoner on the highway, or the pack horse on the trail; the commodity, no matter where originating; the terminal, wherever or however built or operated; the private car, under whatever contract used—are all alike subject to this constitutional power of the General Government whenever in any way connected with traffic between different States, Territories, and Districts.

The commerce clause of the Constitution, like some others, originated in fear of discrimination. It was never ordained as an instrument of unfairness or injustice. It authorizes Congress to prevent one line or person or commodity or locality or interest from destroying another through artificial and unfair means. It forbids such destruction through nullifying rightful advantages of one to transfer its importance to another. All localities, markets, persons, commodities, and interests should have fair and like treatment as to rates, regulations, and practices, according to conditions, the variety and dissimilarity of which, in this great country, blessed with such great and diverse commerce, make sameness and uniformity absolutely impossible.

Though often and long importuned with "line upon line and precept upon precept," begging for fair treatment, the carriers have ignored the cries of the people and failed and refused to desist from their unjust practices even when most politely advised so to do by the Interstate Commerce Commission, which, under present construction of the law, has no power to do anything but advise. So it appears that further legislation is absolutely necessary, and the carriers have their own obduracy and greed to thank for forcing the people to resort to such legislation. The people are patient and seldom complain, but when they are driven to complain they are generally right. They will secure the legislation some time. It is said that at this time their demand is to be appeased, while the fears of the carriers are allayed at the same time, by passing through this House, "under whip and spur" and without opportunity of amendment, the bill reported by a majority of the committee. If it is true that the matter is to end for this Congress with the action of the House, I concede that the question of amendment is perhaps immaterial.

But I am persuaded from the humorous remarks of certain distinguished leaders here yesterday, and other recent circumstances, that it must be a joke. It is true that the emphasis placed on the words "this House" by the gentleman from Ohio [Mr. GROSVENOR] were noticeable when he declared that the majority had determined to pass the majority bill through this House. I wondered why the Republican party, which boasts "that it always does things," had not also determined to pass it through both Houses. It has a larger majority in the other House than in this. I am sure they would find no Democratic obstruction. Over there it would not even be necessary to gag the minority with a rule. By the way, if time is important, and there was a real purpose to legislate, and opportunity for amendment being denied anyway, three days could have been saved in this House for use in the other. Debate can have no effect on results in this House under the rule adopted. The vote might better have been taken yesterday, so as to expedite legislation, if legislation were intended. Of course the Republicans knew this, and I hope they were not seeking delay. Republican bluster here may fool some people when it becomes necessary for the majority and Administration to explain the dereliction of their party on the rate question during this Congress. I have never heard them accused of not being smart and shifty.

I was really pained at some of the things said yesterday by majority leaders. The gentleman from Michigan [Mr. TOWNSEND] appealed to us to eschew partisanship and cooperate with them, and our hearts yearned to do so. But the gentleman from Pennsylvania [Mr. DALZELL] had cruelly intimated that they did not need the help of Democrats. I have no doubt he meant to say did not need it to pass the bill through this House and did not want it at all.

My opinion is that whether wanted by them or not our activity will have compelled any advanced action they take, whether it becomes a law or not. The anticipations of the gentleman from Ohio are correct. If this bill becomes a law the world will give us credit for forcing action whether we claim it or not. If you do not complete the legislation the country will damn you for trifling with so important a subject and preventing action. Through our persistent agitation all have about agreed that there should be additional legislation. Both parties now want it. The President also now wants it. The man who should have been President for the last eight years still wants it. All who wish to be President, or to secure any other office, want it. All the people want it; and even the railroad presidents want it, and are invading the Capitol, the White House, and the public press to make known their anxiety. Then, let us not stop with the Speaker's adjuration to pass "some kind of a bill" "through this House only," but let us enact a good and effective amendment to the law. What shall it be?

The substitute offered by the minority, notwithstanding some inconsiderate criticism by persons who could, like ourselves, by further study, learn more of the subject, provides substantially what is needed to make the present law effective and contains substantially what has been asked for in the thousands of appeals made to Congress, and contains nothing further. Considered in the light of existing law, which is necessary to safe and intelligent legislation, it is by far the best considered, the best prepared, the best matured, the best constructed, the most practical, and the most intelligently adapted to the situation and the necessity of the case of all the bills ever prepared. Nor has any suggestion emanated from either side of the House or the press outlining a more effective or more appropriate bill to meet the needs of the people for amendment of existing law.

The minority members of the committee do not claim perfection for the bill. They regret that it is not better, and it is not immodest for them to believe it would have been better if all who had studied and understood the subject even more imperfectly than themselves had refrained from embarrassing them at a most critical period of their labors, when tactical judgment was needed. If the substitute had not been better we might have secured better legislation, if any at all, which the six Democrats on our committee regarded as more important on this particular subject than mere party advantage. Let no sensation monger interpret this as a fling at the minority leader. He has been in consultation and accord with us since long before this spasmodic ebullition of fustian and buncombe attacked the Republican party. The people have not demanded revolution; evolution is making a system of controlling commerce.

Defects in the system demand attention. Necessary amendment should meet the demand and nothing else. Any man with an active mind or imagination can suggest many things that might please his fancy, but no man can get all he wants, and it is certain that in our substitute we propose more than we will ever secure from this or any other Republican Congress. Nor do we go on and add destroying clauses to undo the remedial provisions in our bill, nor burdensome and unasked-for conditions to vex, encumber, and complicate the system. We say the most necessary things and stop. As compared with the majority bill we appeal to the judgment of the people. We have already received the approval of the press.

Both the proposed bills under consideration offer much that is good. The minority bill contains practical remedies, valuable when taken in connection with existing law. The majority bill starts out by proposing substantially much the same thing, but instead of stopping where the minority bill does it goes fur-

ther, coupling therewith saving clauses, which undo very much of the parts which might otherwise be valuable, and adding some provisions wholly unnecessary, troublesome, and expensive. Neither of the bills specifically refer to terminals nor private-car lines. If, as claimed by the gentleman from Michigan, the first section of our bill may be construed to apply to private-car companies, it is equally true of the first section of the other. I do not concur with him. The truth is the subject of private-car lines, being regarded as a separate matter before our committee acted on the pending bills, had without a single objection been referred to a subcommittee, supposed to be competent, which is actively considering the subject. It will probably favor some method of retaining private cars and regulating their use, rather than outlawing and destroying them. It is also probable that whatever bill may be recommended by that subcommittee will finally become a law as soon as either of the bills now under consideration here.

The private-car companies and the railroads justify their wrongful practices by the plea that but for those cars no other facilities could be secured, and the fruit and cattle could not be moved. Then they prove the truth of the plea by making contracts which shut out all other facilities. Like poor, helpless, poverty-stricken things, the railroads complain that they can not furnish facilities, and that the ear lines, commanding the situation, take the carriers by the throat and impose such terms as they choose to dictate. That being the case, the law must interpose to protect and relieve the poor, weak carriers from highwaymen who hold them up. Yet the private-car companies are making statements before our committee in the nature of pauper affidavits, showing that they don't make a cent, but are operating through pure philanthropy. According to some of their showings, I fear that government regulation would be followed by frequent and liberal claims on their part for shortage in revenue and demands to make good this deficit in such patriotic efforts to serve the public.

The argument of the private-car lines is the same always urged in behalf of monopolies, special privileges, and tyranny: Absolute control, shutting out all competition, handling both supply and demand, calculating accurately may provide facilities exact as well as adequate, thereby securing economy, and thereby also rendering service at once more profitable to the monopoly and better and cheaper to the people.

While all know that to be fallacious, yet many support the theory by practice and acquiescence, the most effective way to support anything. The exclusive contracts are obviously criminal under the antitrust law. Besides, both they and the terminal subterfuges are very thinly disguised devices for rebates; but if further legislation is necessary it should be had, even if the President, in his patriotic cooperation with the Democrats, should by the unfaithful conduct of the Republican majority be compelled to call an extra session of Congress to enact this and other needed rate legislation. The two bills supported by the majority and minority agree substantially as to conferring the power to correct an erroneous rate by denouncing an unfair rate and declaring a fair one. Both are substantially identical as to connecting joint rates, but the minority bill in section 3 makes valuable provisions as to competitive points and the just relation of rates at terminals and intermediate points on the same line, offering amends for the emasculation of the long and short haul clause. The penalty clauses are very similar.

The minority bill proposes for the rate to take effect after twenty days and remain in effect and force until set aside by the final judgment of the courts. The majority bill provides that the order become effective after thirty days, if it is not prevented from ever going into force, under the ample provisions and invitations of section 14 of their bill. A rate declared and suspended would be a mockery, permitting the carrier to go on receiving and appropriating the ill-gotten proceeds of a rate already denounced as unjust. No provision of law nor order of the court for maintaining the status quo has been suggested that will do justice in the premises.

To continue to collect the unjust rate from all shippers indiscriminately or promiscuously would inflict irreparable injury. If the shipper paid it he would soon pay out more than his capital. Even if eventually refunded he and his associates might in the meantime have been driven out of business and the commerce of the town destroyed by the discrimination. If the shipper pays it and adds it to his prices, he distributes the burden among his customers and gradually drives them away from his trade. In any event, if the order is finally upheld by the courts, either the shipper or his customers have been robbed of that much money, to recover which would require a multiplicity of vexatious and expensive suits. The rate ought to remain in force, as provided by the minority bill, until set aside finally by the courts. That would offer an inducement to the carriers to press their suits to an early termination. The majority bill permits the Commission to raise or lower rates.

The minority bill forbids the Commission to advance a rate, filed and published as profitable and satisfactory, but there is no restriction as to the carriers advancing the rates according to existing law. It is best to prohibit the Commission from raising a rate, for otherwise injury might be inflicted by the enforced diversion of traffic from markets and routes natural and easy of patronage to others not so highly favored. Both bills profess to retain the present Interstate Commerce Commission, but the majority proposition would so change it as to place it beyond recognition. That bill would increase the membership, the salaries, and the terms of office, all of which is entirely gratuitous, unless imposed as a condition of conferring the rate-making power. Nobody has ever suggested any change in these respects. The present salary, $7,500, is large enough to secure competent talent and compensate for the service. The term six years is long enough to comport with the American idea of official responsibility.

The membership is full large for efficiency. The only complaints filed are to the effect that sufficient power has not been conferred on the Commission to make and enforce its orders. Neither bill provides any statutory appeal nor new procedure. Both rely on existing methods on the one hand to proceed in the courts to enforce orders and punish violations, and, on the other hand, a dissatisfied carrier may proceed in court to review, arrest, and annul the order of the Commission. The majority bill, however, seeks to create a new court with special and exclusive jurisdiction over cases affecting transportation and to appoint five more Federal judges for life with large salaries.

We have judges and courts enough. The expensive increase proposed is wholly unnecessary. When we vitalize the Commission by empowering it to make and enforce its orders certainty and celerity of justice will reduce litigation. Carriers go not to law unless they have reason to hope for ultimate success of for such long delay as would be equivalent thereto. Knowing that speedy judgment and sure correction would follow wrongdoing, they would soon conclude that it is cheaper and better to avoid trouble, expense, and punishment by acting in the first instance with more regard for the rights of the people. If effective legislation be enacted, the additional judges provided would find little to do. In the hearings before our committee it was the opinion of both Mr. Bacon and Judge Cowan, as well as Mr. Commissioner Clements, that existing procedure is sufficient and there is no necessity for additional courts or judges.

When our committee began the study of this question, several years ago, some of us were of the opinion that prevailing evils were mainly due to rebates and delays in courts; so a couple of makeshifts were devised, one of them aimed at rebates, which is said to have accomplished much good; the other pretending to provide for expediting cases. Unthinking people believed that it did afford means to expedite all litigation affecting commerce, but somehow it only applied to cases where the United States were complainants, and even then on motion of the Attorney-General only. The great number of cases brought to resist or annul orders of the Commission were not affected at all by that act. To supply that omission and in striking contrast with the unwise provisions of section 14 of the majority bill, the minority proposes that without any motion in court, every case, whether to enforce or resist an order of the Commission, takes precedence over all except criminal cases in every court to which such case may go.

Under either bill the carrier may invoke the power of the Federal court—existing courts according to the minority, but under the majority bill the new and special court. The majority bill provides that the court may hear new evidence, a wrong somewhat mitigated by limiting the new evidence to such as was beyond reasonable diligence in the hearing before the Commission. It still remains unfair, unjust, and improper to hear additional testimony and vacate the action of the Commission on evidence the Commission never heard. The carriers should be required to present their entire defense before the Commission, and if, prior to a court taking jurisdiction, material facts should be discovered not previously accessible to diligence, the Commission should be authorized to reopen the case, hear the new testimony, and again make up its order. If that is still unsatisfactory to the objector, then authorize the court to take up and dispose of the matter upon the law and the record of the case before the Commission, not undertaking to determine disputed facts.

If the new evidence is discovered after the court has taken jurisdiction it requires that the court remand the matter to the Commission, that the new evidence shall be heard and the case be passed upon again by the Commission. The minority bill

requires the court to hear no testimony, but to decide the case upon the law and the evidence heard before the Commission. It appears that in practically all the cases in which the orders of the Commission have been set aside such action of the court was based on evidence which had never been submitted to the Commission. The proposition of the majority to tax the cost against the losing party is discussed in a letter from J. C. Hundley, of Fort Smith, Ark., in the following language:

You will note a provision for the costs of suits before the commerce court to be taxed against the unsuccessful party after the manner followed in the circuit court of the United States in cases between private litigants.

If this section is permitted to become a part of the law, it will result in very great injustice and discrimination to the average shipper and will serve as, practically, a barrier to the proper hearing and investigation of real or imaginary rate discrimination. The average shipper would hesitate and in many cases fail to ask for an investigation or review on this account. Adjustments of this character are radically different from the adjustment of contentions between private individuals.

It should be the object of the Government to protect the small shipper against discriminations and unjust methods in the same manner as the State or Federal Government protects its subjects against torts and crime.

Further, the machinery for this purpose should be so arranged that any shipper, however small, is at liberty to present the facts pertaining to a case of actual or alleged discrimination, such facts and statements to be reviewed and passed upon by a competent, impartial governmental tribunal.

To the average small shipper discriminations are destructive, but with the degree of uncertainty as to the merit, justice, or possible decision of the commerce court, many would prefer to continue to bear the burden rather than assume the risk of possible defeat and additional expense. Under the present system, investigations, prosecutions, etc., are conducted without expense to the individual shipper.

During a number of years of practical experience in this work we have never learned of an objection being registered against this plan, and we are inclined to the belief that no good and sufficient argument can be advanced justifying the enactment of this clause.

The object, purport, and intent of this clause is seriously detrimental to all interests and would result in direct opposition instead of relief to the shipping public, and if permitted to become a part of the law would result in renewed and vigorous agitation for its repeal.

It is stated by the majority in palliation of offering section 14 that we can not by legislation oust the jurisdiction of courts to inquire into the validity of orders, and enjoin them, and suspend them by temporary restraining orders. It is true that the jurisdiction of the court can be invoked to pass upon the validity of any act of any legislative body or any order of any official, or any action of any Department, or even the judgment of another tribunal; but the matter of suspension of operation pending litigation depends upon certain well-established and fundamental conditions, and the authority should always be exercised within certain limitations. If it were made to appear to the court that the action of the Commission was not based on regular proceedings, in accordance with the law authorizing the Commission to exercise the power, such as that there was no notice or no evidence heard, or if any testimony were offered it did not make a case, even if undisputed; or if the complaint itself made no valid case, or if for any omission of compliance with law or absence of legal power to take the action involved, in such cases the order should be suspended pending the litigation, but it should not be done except in such clear cases, and after notice and hearing by the court taking jurisdiction. Then, if granted, delay and litigation might be avoided either by the abandonment of the matter altogether or by a new proceeding before the Commission if there were really a cause of complaint, but fatal defects had vitiated the former proceeding and order. Section 14 of the majority bill is, in my judgment, a Pandora's box of evils, which would largely destroy all the professed benefits of the bill. If it does not afford more ample facilities for delaying and defeating proceedings against the carriers than exist by present law we are very much deceived, and it is useless to the carriers. If it affords less procedure and facilities than existing law it is unfair to the carrier, and if it does neither it is a useless waste of words. As to remedies in courts, to enforce a valid order of the Commission or resist an invalid one, existing courts and procedure are ample and fair. What we need is to empower the carrier to make valid orders and enforce them in the courts. We will do well if we provide that much.

Aside from the obsolete long and short haul clause, the act to regulate commerce provides that—

All transportation charges shall be reasonable and just.

The long and short haul clause might possibly be reanimated by repealing the words "under substantially similar circumstances and conditions," which phrase destroyed the clause. The first section might also be rendered much more effective by repealing the words "under a common control, management, or arrangement for a continuous carriage or shipment," thereby subjecting to interstate control all things entering into interstate commerce, whether carried the entire journey by one management or not. There are already many provisions against injustice and discrimination, of which many violations are alleged throughout the country.

I would neither proscribe the carriers nor unjustly injure their property, but the law should treat them and their property just as other persons and their property, fairly and justly, requiring them also to treat the Government and the people fairly and justly.

The people need railroads and desire their prosperity. Most of our country is yet not fully developed. People are not inclined to discourage capital from extending the lines. If those in charge will manifest a disposition to do right they will find the people long-suffering and slow to anger. But competent service and fair treatment must be accorded.

The railroads extending from the North and East to the South and Southwest are effective educators as well as factors in commerce and wealth. They afford business and social communication; they enlighten the different sections as to the character, purposes, and resources of their fellow-countrymen, thereby promoting accord and fraternity, if not homogeneity, in all parts of the Union.

Ignorance and misrepresentation of one another produced much of the discord between the sections. The existence and liberal use of such effective transportation lines, with a few modern expositions supplementing their benign operations two generations ago, would have gone far to harmonize and unify all parts of our country and avert much of our unfortunate history.

When Lord Bacon wrote—

Fertile fields, busy workshops, and easy means of transportation for men and commodities make a nation great—

even his great wisdom could not foresee the discrimination and restraints in recent years inflicted upon commerce and agriculture.

Thus far the Interstate Commerce Commission has betrayed no disposition to partisanship, sectionalism, nor partiality. The gentleman from Michigan assures us that it is not likely to do so, nor is it intended by his bill that it ever shall. I know that there are wise and good men in all sections and parties, even in the Republican party, in spite of their political environments.

I doubt not that proper men may continue to be found for that important service, who will so exercise the enlarged powers of the Commission as to correct abuses and irregularities, restore to the people justice and fairness, reestablishing in this great Republic Lord Bacon's ideal conditions to protect and preserve them to our glorious people in their full and prosperous enjoyment of the untrammeled and unrivaled advantages with which nature and enterprise have blessed them. There is another provision of the Constitution prohibiting the Government from giving preference to the ports of one State over the ports of another. It is not now applicable to carriers, but when the Government assumes rate-making powers it will enter into the question.

The Commission, actuated by the spirit of that section in operating under the commerce clause, may easily adjust many questions of competitive points as well as ports, which the long and short haul clause has failed to solve. Under Government supervision rates and facilities would be adjusted according to conditions of transportation, and not personal and local necessity, nor the opportunity of monopoly to extort unfair gain.

Mr. DAVEY of Louisiana. I yield one hour to the gentleman from Missouri.

Mr. SHACKLEFORD. Mr. Chairman, the power of Congress to regulate common carriers in their relation to the transportation of interstate commerce is so generally conceded that I shall not argue that proposition. It is equally well settled that this power may be delegated to the Commission.

While nobody denies the power, many doubt the wisdom of exercising it. They consider that such regulation would be unwarranted governmental interference with the private affairs of citizens, the effect of which would be to establish a system of communism. This is an error fallen into from having looked at the subject from the wrong view point. If the Government were to indeed assume control over the purely private energies and activities of individuals, it would constitute an intolerable paternalism inconsistent with our traditions and institutions. The mistake which gentlemen make is in regarding railroads as purely private enterprises.

The constitution of Missouri provides: "Railroads are hereby declared to be public highways." This is but declarative of the common law. A great judge has given this definition of the principle of the common law:

When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good as long as he maintains the use.

The primary purpose for which every railroad is authorized and constructed is to serve the public and incidentally to afford to private owners reasonable compensation for such service.

Railroads being public highways, it follows that any injury or unreasonable burden inflicted upon them is an injury or unreasonable burden inflicted upon the public. Therefore it is incumbent on us as representatives of the people to carefully foster and protect these great arteries of commerce. They are the very foundations upon which rests the prosperity of our people.

As railroads are public highways, the public has a right to demand that it shall not be required to pay more than reasonable tolls for the use of such highways. Yet it is within common knowledge that railroad rates are grossly excessive. Officers and managers of these properties, forgetful of the rights of the public, levy rates not with a view to what the service is reasonably worth, but for the purpose of collecting the last penny the commodity to be carried will bear. For instance, the rate from Baltimore to Chicago on 100 pounds of writing paper is 67 cents, while on 100 pounds of wrapping paper it is 47 cents. On 100 pounds of brass hinges it is 67 cents, while on 100 pounds of iron hinges it is only 47 cents. If 100 pounds of wrapping paper can be carried for 47 cents, why can not 100 pounds of writing paper be carried at the same rate. If 100 pounds of iron hinges can be carried for 47 cents, why should the same weight of brass hinges cost 67 cents? Why the difference? It is simply a system of extortion by which the railroad seeks, not a fair and reasonable compensation for the service performed, but a division of the profits of the producer of the commodity, which belongs to him exclusively as the fruits of his industry. The managers of railroads can not be relied upon to keep within reasonable charges, and hence Congress must intervene.

Railroads being public highways, everybody has the right to use them on equal terms. Yet the most strenuous opponent of governmental regulation will not deny that unfair and unjust discriminations have resulted in building up the great monopolies, like the Standard Oil, the steel trust, the beef trust, the coal trust, and others of like character. None of these monopolies could ever have hurt the people but for the unfair discriminations made in their favor by the railroads. How can the people be relieved from these discriminations except by governmental supervision?

Innumerable instances could be cited to show that railroads have raised unjustly the rates on certain commodities by simply shifting such commodities from one freight classification to another. Private car lines have been used as the instrumentalities for maintaining the most infamous and destructive system of discriminations. Terminals and terminal facilities have been used for like unlawful and predatory purposes. Congress is the only power that can reach and cure these abuses.

Heretofore litigation growing out of attempts to correct the evils that afflict transportation have proceeded so slowly in the courts that practicable relief has been impossible. How can this be cured except by the creation of a court which shall give its exclusive attention to this litigation?

Congress must act. The existing conditions can not continue. The people have for years been petitioning for relief and they will have it.

The President, in his message to this session of Congress, said:

> Above all else, we must strive to keep the highways of commerce open to all on equal terms; and to do this it is necessary to put a complete stop to all rebates. Whether the shipper or the railroad is to blame makes no difference; the rebate must be stopped, the abuses of the private car and private terminal-track and side-track systems must be stopped, and the legislation of the Fifty-seventh Congress which declares it to be unlawful for any person or corporation to offer, grant, give, solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce whereby such property shall, by any device whatever, be transported at a less rate than that named in the tariffs published by the carrier must be enforced. For some time after the enactment of the act to regulate commerce it remained a mooted question whether that act conferred upon the Interstate Commerce Commission the power, after it had found a challenged rate to be unreasonable, to declare what thereafter should, prima facie, be the reasonable maximum rate for the transportation in dispute. The Supreme Court finally resolved that question in the negative, so that as the law now stands the Commission simply possess the bare power to denounce a particular rate as unreasonable.
>
> While I am of the opinion that at present it would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review. The Government must, in increasing degree, supervise and regulate the workings of the railways engaged in interstate commerce; and such increased supervision is the only alternative to an increase of the present evils on the one hand or a still more radical policy on the other. In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect and to stay in effect unless and until the court of review revises it.

In this utterance the President was but voicing the declarations of the last three national Democratic platforms.

The national Democratic platform contained the following:

> The absorption of wealth by the few, the consolidation of our leading railroad systems, and the formation of trusts and pools require a stricter control by the Federal Government of those arteries of commerce. We demand the enlargement of the powers of the Interstate Commerce Commission, and such restriction and guaranties in the control of railroads as will protect the people from robbery and oppression.

The national Democratic platform of 1900 presented the question in the following language:

> We favor such an enlargement of the scope of the interstate-commerce law as will enable the Commission to protect individuals and communities from discriminations and the public from unjust and unfair transportation rates.

The national Democratic platform of 1904 declared:

> Individual equality of opportunity and free competition are essential to a healthy and permanent commercial prosperity, and any trust, combination, or monopoly tending to destroy these by controlling production, restricting competition, or fixing prices should be prohibited and punished by law. We especially denounce rebates and discrimination by transportation companies as the most potent agency in promoting and strengthening these unlawful conspiracies against trade.
>
> INTERSTATE COMMERCE.
>
> We demand an enlargement of the powers of the Interstate Commerce Commission, to the end that the traveling public and shippers of this country may have prompt and adequate relief for the abuses to which they are subjected in the matter of transportation. We demand a strict enforcement of existing civil and criminal statutes against all such trusts, combinations, and monopolies, and we demand the enactment of such further legislation as may be necessary to effectually suppress them.
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> Any trust or unlawful combination engaged in interstate commerce which is monopolizing any branch of business or production should not be permitted to transact business outside of the State of its origin. Whenever it shall be established in any court of competent jurisdiction that such monopolization exists such prohibition should be enforced through comprehensive laws to be enacted on the subject.

To those who cherish the delusion that Mr. Roosevelt is the pioneer in demanding this legislation, I would suggest a comparison between the language of his message and the language I have quoted from the national Democratic platform of 1904. The words of the President are simply in line with what the Democracy has been demanding for years. I call attention of gentlemen on the other side that their platform is silent on this subject. However, the President has taken up the fight, and we shall find pleasure in giving him our loyal support.

Any legislation will fail to meet the necessities of the case unless it shall provide:

1. Power to find a given rate unreasonable or unjust and to prescribe a reasonable and just rate to be substituted for it.
2. Power to prescribe a joint rate.
3. Power to eliminate unjust discrimination.
4. Power to stop rebates and secret cut rates.
5. Power to regulate private cars and private car lines.
6. Power to regulate terminals and terminal facilities.
7. Power to regulate freight classifications and rate schedules.
8. Power to compel the furnishing of equal facilities to all.
9. A court in order to facilitate litigation growing out of the orders of the Commission.
10. A limitation on the power of the Commission to raise rates.

The Hearst bill, which Mr. LAMAR and I have reported from the committee with amendments, covers all of these points, and it is the only bill reported that does. The Rules Committee, however, has deprived us of any opportunity to vote upon this measure. The rule which has been reported from the Rules Committee allows the House to vote only on the Davey bill and the Esch-Townsend bill. The excuse given for this manifestly unfair rule is that the Democratic caucus declared for the Davey bill and the Republican caucus declared for the Esch-Townsend bill. The real purpose of this gag rule undoubtedly was to prevent the RECORD from showing that the Republicans of this House voted against the bill which Mr. LAMAR and I have reported.

In a spirit of supererogation the gentleman from Pennsylvania [Mr. DALZELL] undertakes to tell this House that the Democratic caucus held a few days ago declared for the Davey bill. The gentleman ought to know, and by reading the public press could have known, that the caucus did no such thing. The resolution adopted by the caucus declared that it "approved the provisions of the Davey bill." Not the Davey bill, but the provisions of the Davey bill. When the caucus was held the Davey bill consisted of two short sections, hardly enough to make one page. I have always approved and now approve every provision of the Davey bill, and yet I never for one moment approved the Davey bill. The principles it contains are

sound. But, Mr. Chairman, in enacting a law the principles stated should not only be sound, but they should be aptly and coherently expressed, so that it shall not be left to doubtful construction of dubious language to determine what the law is. The Davey bill does not clearly set forth the principles embraced in it. Then, again, while the principles of the Davey bill are correct as far as they go, the bill does not go far enough. It was distinctly stated and understood in our caucus that it was not expected that the bill should be reported in its then unfinished shape, but that in the committee it should be elongated and elaborated till it should be a perfected bill. That is precisely what Mr. LAMAR and I have done. Every principle in the Davey bill as it was presented to the caucus is embraced in the bill which we have reported and stated so explicitly that there should never be any fear that it would be misconstrued. The Davey bill as it is now before the House is not the Davey bill which was presented to the caucus. As I have said, the caucus bill had only two short sections. The Davey bill as it stands here to-day contains seven sections. To say that this bill in its present form is incoherent is not to reflect upon the intelligence of those who constructed it, when we consider the conditions which surrounded its construction.

In the committee all of the Republicans declared for the Esch-Townsend bill, and then generously gave the Democrats on the committee an hour to consult among themselves as to what they would offer as a substitute. The hour had almost drawn to a close. The gentlemen reporting the Davey bill looked at the two little sections that had been presented to the caucus. They concluded that they were too naked to look well, and so they began to search for some clothing with which to adorn them. In their haste they cut a section out of another bill and added it to theirs and designated it as section 4. This section most likely fitted into the bill from which it was taken, but it was certainly a misfit in the Davey bill, into which it was imported. Let me illustrate. In this section 4 we find these words: "In case any carrier shall neglect to adopt 'such' classification," etc. The word "such" in the bill from which it was taken referred to the classification mentioned in some preceding part of the bill. The word could serve no such purpose in the Davey bill for that bill does not give the Commission power to regulate freight classifications at all. Again, section 1 of the Davey bill provides that the Commission shall not have power to compel a carrier to raise a rate which it has filed and published. But in this imported section 4 we find this language: "Thereafter if any carrier shall maintain any lower fare," etc. This is clearly in conflict with the spirit of the provision alluded to in the first section.

The gentleman from Mississippi, who seems to be the champion of the Davey bill, said in this House a few days ago that we will "toe-mark" the President in this matter. But certainly, Mr. Chairman, the Davey bill does not "toe-mark" the President's recommendations. The President declared against discriminations. Not a word does the Davey bill contain on that subject. The President denounced the abuses of the private car. The Davey bill is silent on this subject. The President demands the regulation of terminals and terminal facilities. Again the Davey bill is silent as the grave.

Mr. Chairman, it is not a question of "toe-marking" the President, but of marching shoulder to shoulder with him as long as he "toe-marks," the declarations of the three last National Democratic platforms. It is a question of marching shoulder to shoulder with the President as long as he marches shoulder to shoulder with the great Nebraskan who has long been leading on this question.

Mr. Chairman, it is among my regrets that the President did not deliver his bold words on this subject at the last session of Congress—the long session—when we should have had ample time to consider these measures more deliberately and carefully. I do not know why he waited till this last little piece of a session to present his recommendations. Some one inclined to cast an insinuation might say that his delay was due to his knowledge that there was an election ahead of him and that he feared the influences of the railroads. I will not say that. Let us credit him with candor and sincerity as long as he will lead us in a struggle for the relief of the people. Above all, let us on this side not lag behind him.

Mr. HAMLIN. Will the gentleman yield to me for a suggestion?

Mr. SHACKLEFORD. I will.

Mr. HAMLIN. I would like to ask the gentleman if his attention has been called along that line to a statement in the Washington Star of yesterday, a Republican paper, as I understand, and of course an Administration paper? In the paper of last evening appears this statement in regard to the president of one of the railroads visiting the White House for consultation. I will read:

A remarkable feature of the propaganda for this proposition is the fact that President Roosevelt, who is directing it, has endeavored to enlist the aid of the men foremost in opposition to it. He has been trying to get President Spencer of the Southern Railway and President Cassatt of the Pennsylvania Railroad, who up to this time have opposed the rate-making feature of the bill, which is really the meat of the whole matter, to withdraw their opposition and advise the passage of the bill. The assumption, of course, is that if these two heads of great trunk-line systems, recognized as among the foremost railway men of the country, should consent to the legislation it would lessen excuse of Senators for opposing it.

Mr. SHACKLEFORD. I had noticed this article, and I have also observed from reading the papers that President Roosevelt is having frequent consultations with President Cassatt, of the the Pennsylvania Railroad, President Spencer, of the Southern Railroad, and other railroad presidents. This does not look well. Nevertheless we will hope for the best and will not question the sincerity of the President unless he shall relent in this fight for the relief of the people. We will give him our cordial support.

Gentlemen seem to think it were better that we should accept partial remedies now and trust to future legislation for complete relief. This is a fatal mistake. For years we have been clamoring for a chance to legislate on this subject. Now after decades of waiting an intense public sentiment and a strenuous Executive have forced a consideration of this great question in this House. What shall we do with our opportunity? Fritter it away on some half-way, half-hearted measures? No. We should go boldly into a consideration of the whole subject and present a measure affording ample relief for every transportation abuse. If we do less we shall be recreant to the people who sent us here as their representatives. I should like to ask gentlemen who urge that we accept partial relief now and trust to future legislation for complete remedies, what is there in the history of the Rules Committee of this House to give them hope that we shall again be allowed to consider this question? When the insufficient and incomplete legislation of this session has been enacted we will be told to wait for further legislation till this has been tried out in the courts. Under the provisions of the Esch-Townsend bill this will require years of litigation. In the meantime the people will be suffering the same extortions they have been enduring in the past. Entertaining these views, I believe we should have gone into the whole question now.

I have pointed out some of the defects and omissions of the Davey bill. Had I the time and inclination I could indicate other errors equally glaring. Nevertheless I have no hesitancy in supporting it against the Esch-Townsend bill. There is one provision in the Davey bill which redeems it from any comparison with the Esch-Townsend bill. I allude to the proviso to the first section, which reads as follows: "*Provided*, That the Commission shall in no case have power to raise any rate filed and published by a carrier." In my opinion there is involved in this short proviso every industrial and commercial interest of every citizen of the Republic.

Mr. Chairman, there are those who declare that the ideal government is one in which all of the people are to be dealt with as a single unit, that cooperation and not competition shall be the controlling principle, that each shall work for all, and that the results of each man's thought and each man's labor shall go into a common pool for the collective use of the aggregated mass; that the individual shall be nothing and the community everything. Such a policy would turn civilization back upon itself and relegate the human race to barbarism.

The constitution of my State provides that there shall not be any consolidation of parallel or competing lines of railroads. It is probable that the constitutions of more than half of the States contain similar provisions. The suit to prevent the merger in the Northern Securities case was based on this principle. It has been the policy of the American people to promote competition between carriers, industries, and markets. The railroads have always desired the privilege of pooling and the people have always opposed it.

The Townsend bill, if it becomes a law, will, in effect, pool all of the railroads into one extensive system and eliminate all competition not only between them but between markets as well. Unlimited power to regulate rates gives the authority to raise as well as lower rates. Gentlemen on the other side say that no commission would ever exercise the power to raise rates, even if it were conferred upon them. This is an error. If the Commission is given the power to treat all of the railroads as a single system they will come in time to feel that it is their duty to so regulate rates that each road shall earn a dividend on its stock.

Mr. Chairman, railroad abuses have become so enormous, the people feel such a sense of having been outraged, that there is danger that in attempting to secure relief we may fall into a worse condition. It were well to consider the source of the agitation and clamor that has filled the air on this subject. Who is it that has been before our committee urging legislation? Not the farmer, not the small trader, not the individual manufacturer. We have heard only the middlemen, the railroad men, and the trust magnates. Undoubtedly the man who has given us most advice as to the kind of legislation we should enact is Mr. E. P. Bacon, of Milwaukee. He has been a grain dealer at Milwaukee, and in the fierce competition between Milwaukee and Minneapolis he has seen Milwaukee lose a large share of her grain business. Mr. Bacon is not a producer nor a consumer. He is a middleman, a shipper. He cares nothing about the rates which are charged, whether they be high or low, so they are so fixed that they will bring trade to his city. It is not the rate but the differential in which he is interested. He calls himself a shipper. Let me read from his testimony given before our committee. He said:

The shippers do not care what rates are charged. It is the relation of rates between competitors; that is the thing they want fixed.

He don't care a straw how high the rate is, so that the Commission shall either put down the Milwaukee rate or put up the Minneapolis rate, so that grain shall come to his elevator. It would suit him just as well for the Commission to raise the Minneapolis rate as to lower the Milwaukee rate. Before we examined him I had supposed he was here asking legislation in behalf of the people. I did not know he was seeking special privileges for the middlemen. He has been appearing before the committee for years and has advocated many bills. Some of these provided for the most extensive pooling of the railroads, yet he supported them in the hope that the Commission would be given power to maintain artificial differentials to overcome natural differentials that were taking business away from his city. Let me read further from his testimony:

The Elkins bill, I will say, in addition to having been framed by the general counsel of the Pennsylvania Railroad, was amended at our suggestion by the counsel and the amendment approved by President Cassatt, and we then adopted it as a substitute for the Nelson-Corliss bill and joined with the railways to secure its passage.

Here, then, we have this supposed friend of the people conspiring with the Pennsylvania Railroad to secure the passage of a bill providing for the most extensive pooling of the railroads and destroying every vestige of competition which the people had so diligently sought to preserve in their constitutions. His purpose was, as I have before stated, to give the Commission power to control rates so that they could maintain a differential that would enable his city of Milwaukee to compete with more favorably located Minneapolis.

Mr. Chairman, the railroads do not much object to such regulation as Mr. Bacon has been suggesting. Mr. C. Stuart Patterson, a director of the Pennsylvania Railroad, has said recently that he has no objection to governmental regulation. He said:

When the Government regulates the rates of the railroads it must see to it that the lines are fairly treated, and it must carry protection to the extent of preventing unfair competition. To that end it must sanction open agrements between the railroads as to rates and division of traffic under the supervision of the Commission and the courts. The people and the existing railroads should also be protected against the construction of unnecessary new lines. I think that view will appeal to every fair-minded man.

The Hon. Paul Morton, Secretary of the Navy, published a magazine article a few days ago, in which he said:

There are, in my opinion, as many rates in existence in this country which may be fairly considered too low as there are rates which a court would decide to be too high. Rates that are unreasonably low may be just as disastrous to communities as rates which are too high. It is only fair that regulation and protection should go together. If the public is to be protected against a railway charge that is too high, then the railway (which is generally owned by the people) should be protected against a rate which is unreasonably low.

So, then, Mr. Chairman, the railroads are willing to have such regulation as is provided in the Townsend bill, because they hope that the Commission would maintain rates for them and eliminate all competition.

Would the Commission raise rates if the power were given? Would the Commission eliminate competition? That can be best answered by reading what the Commissioners have said.

Judge Knapp, chairman of the Commission, said in an address, made a short time ago:

The evils which have attended the growth and operation of our railway systems, and which have given rise to so much public indignation, have their origin and inducement for the most part in the competition of carriers, which our legislative policy seeks to enforce. That this is a mistaken and mischievous policy I am fully persuaded.

Again, he says:

However diverse or conflicting their interests may be, it is plain that the railways of the United States should, to the fullest extent practicable, be regarded as a single transportation system, so far as their duties to the public are concerned. To enable them to perform these duties with best results to the people they must be permitted by law to enter into agreements with each other, whereby the abuses arising from individual and competitive action may be prevented.

The people of Missouri, the people of Minnesota, the people of a majority of the States, were so anxious to preserve competition among carriers that they provided in their constitutions against any combination or pooling whatever between railroads. Yet, Mr. Chairman, there are hanging around this Capitol the agents of the trusts, the agents of the middlemen, the agents of the railroads, and the membership of the Interstate Commerce Commission itself, urging our committee and urging this House to ride down those beneficent constitutional provisions, eliminate absolutely that competition so universally demanded by the people, and treat the multitudinous railroads of the country as a single system—put them all into one vast trust and make the Interstate Commerce Commission a trustee to regulate and manage them. This condition would be the natural outgrowth of the Esch-Townsend bill.

If all the railroads of the country were thus consolidated into a single unit and placed under the control of the Commission, with power to prescribe not only maximum but minimum rates, by what rules would the Commission be governed in exercising this tremendous power? Let me read again Hon. Paul Morton's words:

There are, in my opinion, as many rates in existence in this country which may be fairly considered too low as there are rates which a court would decide to be too high. It is only fair that regulation and protection should go together. If the public is to be protected against a railway charge that is too high, then the railway should be protected against a rate which is too low.

The Commission would under that system feel bound to so regulate rates that all of the railroads should earn dividends on their stock. If as many rates should be raised as lowered, the average of rates would remain what it is. There would be no reduction of rates. Yet everybody knows that rates are excessive. Under such a system of regulation the governmental bureau would so regulate rates that every dollar of watered stock of every wild-cat railroad in this broad land would pay a dividend. The money to pay these dividends would be wrung out of the people by the Commission. The earning capacity of a railroad would not depend upon the cheapness of its construction and equipment nor upon the economic and careful administration of its officers, but upon the paternal regulation of the Federal tribunal. As an illustration of how this would be accomplished, I quote from a finding made by the Commission, Commissioner Prouty writing the report:

Railway stocks and railway properties ought not to fluctuate in value like industrial stocks or industrial enterprises, and it is hardly probable that they will do so. The causes which have contributed to this in the past will not operate to the same extent in time to come. The great systems have taken permanent form. The tendency is to operate railways as business enterprises, not for the stock market. Consolidations in ownership, whatever their other effects, contribute to the maintenance of rates and will prevent in case of future dearth of traffic the suicidal competition which might otherwise be induced. Still, whatever may be true in the future, they have certainly suffered severely in the past and should be allowed to recuperate in this era of good times.

In other words, the Commission must so regulate rates that its action will guarantee to every railroad a stability of value and a certainty of dividends. The producers and consumers of the country must trust to their own activities and the vicissitudes of competition for their dividends, but the Government must guarantee them to the railroads. If a railroad which has been economically constructed and equipped and prudently and carefully operated shall be found carrying freight at a rate lower than some competing road which has been extravagantly constructed and its stock watered for the purposes of plunder, the Commission is to step in and say to the first of these roads: "Your rate is too low and your competition too severe for this other road to earn dividends. You must raise your rate." Would the Commission take such action? Let me read further from Commissioner Prouty, expressing the views of the entire Commission:

Whatever rate is made on grain from Chicago to New York by the Vanderbilt system must determine the rate between Chicago and the Atlantic seaboard by all routes. We have seen that grain can be transported under actual conditions by the Lake Shore and the New York Central railroads from Chicago to New York at a cost less than that by most other routes. It would be hardly just to these other routes to compel the putting in of a rate upon that line which was reasonable with respect to it alone and which had no reference to its competitors. Upon the other hand, it would be equally unfair to the public if the most expensive line were made the standard.

To meet that condition then those roads that were maintaining the highest rates would be required to lower to a given level and those roads maintaining the lower rates would be required to raise their rates to a given level. Producers and shippers who had been receiving the low rates made by the New York Central and Lake Shore would have these favorable rates taken away

from them, not by the railroads, but by the Commission, in order that some other railroad might not suffer in the competition. This competition is the very thing the people desire and should have. One system of railroads in this country in one year watered its stock to the extent of $150,000,000. That watered stock railroad, under the provisions of the Townsend bill, would rely upon the Commission to protect it from the rivalry of some more honestly and ably managed competitor.

But, Mr. Chairman, the elimination of competition between carriers is not the worst evil that may be accomplished under the provisions of the Esch-Townsend bill. It also puts it in the power of the Commission to eliminate competition between localities and markets. Under the Esch-Townsend bill the Commission would have power to save Milwaukee from the severe competition of Minneapolis, and to restore to Chicago the grain trade which she has lost to New Orleans and Galveston. This bill puts it in the power of the Commission to compel the commerce of the Mississippi Valley to again climb over the Allegheny Mountains to the Atlantic seaboard rather than roll down hill, as it now does, to the Gulf ports. Under this bill it is in the power of the Commission to maintain artificial differentials in favor of one market to overcome natural differentials existing in favor of others. By this bill the laws of trade and the laws of nature are made subordinate to the powers of the Commission. The Commission could raise the rates to Gulf ports and lower rates to Atlantic ports and thus enable the East to continue to take a "rake off" out of the material resources and wonderful industrial activities of the great Mississippi Valley.

Mr. Chairman, such regulation would be the most intolerable form of communism. Sir, it would be a communism from whose blighting effects there would be no redemption except by resorting to absolute State or Federal ownership of every mile of railroad in this broad land. [Loud applause.]

Mr. HEPBURN. Mr. Chairman, I yield one hour to the gentleman from Pennsylvania [Mr. SIBLEY].

Mr. SIBLEY. Mr. Chairman, I yield thirty minutes to the gentleman from Massachusetts [Mr. MCCALL].

Mr. MCCALL. Mr. Chairman, clearly defined evils have developed in the operation of our railroads which demand the attention of Congress, although I believe that under the operation of the Elkins Act they are exceptional. There can be no doubt that favoritism and the unequal treatment of shippers by some railroads have been in the past carried so far as to turn the scale between competitors in the same lines of business, building up the fortunes of one set of men and destroying the fortunes of another. Rebates and secret rates lower than published tariffs have been given to favored individuals. Extraordinary concessions have been made to shippers who own their private cars, to small terminal switches that masquerade under the name of independent railroads, and there has been direct favoritism in the allotment of cars among shippers in times when the demands of traffic were too great for the facilities of the railroad. Public opinion has been aroused upon this question of favoritism and aroused justly. Congress should deal, and deal in no general terms which may be liable to doubtful construction, but clearly and explicitly, with these abuses so that if they now exist they may be stopped and if they do not exist they may not be put in practice hereafter.

But gentlemen declaim about one set of abuses and propose a remedy for something else. They graphically portray the evil of favoritism and discrimination and then announce the triumphant non sequitur that the Commission should be given power to fix the rates at which railroads should sell their transportation. What relation has the making of rates by the Government to the giving of rebates to favored shippers under one device or another, unless it be the relation of cause to effect? Can not a railroad grant a rebate from a rate established by a commission as well as from one established by itself? Rather, it seems to me, rate fixing by an agency of the Government would augment the evil. We may assume, I think, with entire safety that the Commission would not compel the public to pay a higher rate than the railroad asked. If it interfered with railroad rates it would interfere to make them lower. The tendency of reducing rates would be to make weak lines weaker and, in their struggle for self-preservation, they would naturally offer any inducement in their power to secure the business of great shippers. You say such a course would be criminal, but such a course is criminal under existing law.

My objection to the bill proposed is twofold; first, that it does not deal effectively with the real evil and that it makes a most illogical response to the real public opinion and, second, that it does provide for the exercise of a dangerous power with too slight safeguards, a power which is not asked to be conferred by anything worthy of the name of public opinion and which at the most is sustained by a mere public emotion.

Mr. Kernan, one of the most intelligent of the advocates of this legislation, declared that ninety-nine out of a hundred shippers did not complain that rates were too high, but complained at the relative rate—in other words, at a form of discrimination. An attempt is made to utilize a genuine and well-founded public sentiment against any kind of unequal treatment by railroads in favor of a proposition that the Government shall fix railroad rates under the slender safeguards of this bill and embark upon a policy likely to be followed with consequences which very few men have considered. Bring in a bill which shall restore some of the penalties which only two years ago Congress blindly repealed; prohibit both specifically and generally the employment of the different devices for conferring special rates, and then enforce the law which you shall enact and the day of unjust discrimination by railroads will have ended and the abuses which have been complained of will disappear.

But, as I said, this bill not only does not do that effectively, but it does something entirely different. Baldly and honestly stated its chief purpose is to have the Government establish railroad rates. The advocates of the proposition are aware that they are making an extraordinary proposal, from the frank statement of which they recoil. This is shown by the way in which they employ language to minimize it. They say that they do not ask the Government to fix initial rates or to clothe the Commission with general authority to fix railroad rates, but where a published rate is challenged they ask that the Commission may revise it. It is apparently to be something very exceptional and very remote. As interstate rates must, under the present law, be published from all railroad points, it follows that there could not be an initial rate except upon a railroad which had not yet been built; and the power to revise one published rate involves the power to revise all published rates. A single complainant, under the operation of this bill, could without doubt bring in question all the rates from Chicago, for instance, to Boston, New York, and Philadelphia, as related to the rates from Chicago to New Orleans, if, indeed, he could not attack every railroad rate in the United States.

Mr. SHERLEY. Mr. Chairman, will the gentleman permit an interruption?

The CHAIRMAN. Does the gentleman yield?

Mr. MCCALL. Yes.

Mr. SHERLEY. In that connection, is it not true that in the maximum-rate case, where the Supreme Court denied the power, there were involved some two thousand schedules?

Mr. MCCALL. There was a great body of rates involved, I would state to the gentleman, as he suggests, in that case.

The power to fix rates conferred by this bill can certainly be exercised, by the employment of the slightest formality, against every interstate rate in the country. That is too plain to be denied. Why, then, do gentlemen recoil from their proposition? Why do they affect a conservatism as if they would not do the thing they are proposing to do? It is simply that the frank and unqualified statement of the policy would shock all notions of conservatism. I agree to regulation, but it must be a regulation not incompatible with the fundamental principles of private property as it has heretofore been received. Railroads are private property and are operated by private capital. Before permitting private property to be taken for public use, and much more for private use, all civilized law exacts in advance safeguards to protect the owner; but here you propose a proceeding by which some portion of a man's property may be absolutely destroyed for the use of another, and you not only exact no security in advance, but you attempt to restrain the owner from following the ordinary legal remedies in the constitutional tribunals of his country. Years afterwards perhaps courts may hold that the taking was illegal and must be stopped; but what remedy is there for the taking which has already occurred? This feature of your bill crosses the line between regulation and confiscation and outrages the most patent principles of justice.

I know it is said that the Commission thought for ten years that it had the power to fix railroad rates. I am not sure that that is true as broadly as it is stated. I will quote what was said with regard to the task of rate making on the part of the Commission by Chief Justice Cooley, a gentleman who, and I say it without disparagement, was the most considerable man ever a member of that body:

> In a country so large as ours, with so vast a mileage of roads, it would be superhuman. A construction of the law which would require the performance would render the due administration of the law altogether impractical, and that fact tends strongly to show that such a construction could not have been intended.

The Supreme Court held that he was right as a matter of law, and pass this bill and I believe you will find that he was right

as a matter of fact. But let it stand that everybody believed the Commission had the power to fix the rates. They exercised the power on an average, it is said, of four times a year for ten years. It would not appear from this that there was any general injustice in rates. It must be remembered, however, that during those ten years the gentlemen now pursuing the railroads were engrossed by other occupations. They were employed in bank baiting and in attempting to secure the free coinage of silver, employments that are now fortunately obsolete. If those keen and restless intellects should devote themselves exclusively, or in any large measure, to the railroads, the task of rate fixing under this bill would speedily become what Mr. Cooley called it, superhuman. I think, therefore, nothing of what would happen can be inferred from what did happen between 1887 and 1897. It is said also that direful things are going to occur if you do not confer this rate-fixing power. On a sudden a popular rage has been kindled which, unless it is appeased at once, will sweep away all railroad property. I doubt the existence of this rage, but if it exists it is like the appetite that grows by what it feeds on. The very way to bring to pass the thing you want to avert is to start on the policy of rate fixing.

I have just alluded to the silver question, which will again illustrate the point I have in mind. It was said, you will remember, that we must do something for silver or we should speedily witness something extreme done, and would even find ourselves upon the silver standard. And so we did some things for silver, and the very things we did almost put us on the silver standard, and if they had not been repealed they would certainly have put us there. Your bill, in my opinion, takes the first long step in the direction of the policy which you say you wish to avoid. And after your bill has been in operation and the rocks are looming large around you, you can not be sure that you will have at the helm a man of the indomitable will and courage of Grover Cleveland. Suppose you have a President who sets his sails to catch every breeze that blows. Do you think you would have as fortunate an escape as you did from the consequences of "doing something" for silver?

Let us consider for a moment what is involved in the pending proposition. It is said that the construction of the great highways of commerce is a governmental function which has only been delegated to individuals, but it is plain that it is a governmental function that the different States of the Union generally refrained from performing, and refrained with a good deal of discretion in view of the disastrous financial experiments which some of them made in attempting to build the railroads for themselves. They called upon private enterprise to employ private capital in order that the country might be built up, and gentlemen embarked in the business of building railroads not, as might be inferred from some of the sounding generalities indulged in to-day, for the mere purpose of exercising a governmental function, but they embarked in it in response to the invitations of the different State governments, as all men embark in business, for the purpose of making profit for themselves. And the result has been the creation of a railroad system beyond comparison the most splendid of the railroad systems of the world, a system built up with few exceptions by private capital, extending to the most inaccessible regions of the country, and that has been the chief factor in the production of our unparalleled prosperity.

The American railway system resulting from this policy is the crowning industrial glory of America. It is as fair and innocent a form of property as any in existence. If it did not bless him who made it, it doubly blessed the country. It could not be duplicated to-day, I venture to say, by an amount of money equal to its nominal capital. I know it is argued that the shares are largely watered. But I have wondered when statistics were produced here that notorious facts of an opposite character were not stated. Some of the ancient stock-watering performances of Gould and Fisk and Vanderbilt were cited as if they were quite the rule. Why, the New York Central Railroad, which has been referred to, has within ten years increased its capital many millions of dollars and has received in its treasury 25 per cent more money than the par value of the new stock it issued. The Pennsylvania Railroad within two years increased its stock 50 per cent, and it received in money from 20 to 40 per cent more than the stock it issued. Only the other day a great New England railroad issued a large number of new shares and received $170 for each share of the par value of $100. Many instances of a similar character might be cited. Speaking broadly, while there are particular roads with inflated capitals, the railroad system as a whole cost in actual money not greatly less than the amount of its nominal capitalization. The returns upon the money actually invested will, on the average, I believe, not exceed 5 per cent. Notwithstanding our sparse population, we have the lowest rates of any great country in the world.

Now, having practically completed the railroad system of the United States, private enterprise having bridged over our great rivers and tunneled our mountains and bound together every portion of our country by the network of more than 200,000 miles of railroads, along come the professional agitator and the man who bought his land for a dollar and a quarter an acre and saw it increased by the building of railroads to fifty or one hundred dollars an acre, and the member of the board of trade, possibly in partnership with the Government under some tariff schedule, engaged in manufacturing some commodity, making very likely many times the returns upon his capital that the owners of the railroad make upon theirs, and they join hands together and say, "Go to; these gentlemen are performing a governmental function; the Government should take charge of their business and should say at what price they are to transport our wheat and iron." As nearly $1,000,000,000 are each year directly expended by railroads for labor and a great additional amount for supplies in the production of which labor is the chief factor of expense, as in fact two-thirds of the gross earnings of the railroads are paid out to labor, the proposition is this—that people operating with their own capital railroads built by themselves, or those they represent, shall do the work of carrying commodities at a price fixed by the Government, with a very limited right of appeal to the courts, and that a million or more of men working in the employ of private enterprise shall, in the last analysis, have their wages fixed by a Government which is controlled by the majority, whose interest it will be to have cheap transportation.

Can you imagine a more ideal scheme for the destruction of private property and one more likely to corrupt our people? And not merely does the proposition involve the rights of private capital and invade the practical freedom of a man to sell his labor in the open market uncontrolled by the Government, but it vests in a commission the power to revise the geography of the country, to nullify natural advantages, to give to an inland city the benefit of a location upon the seaboard or upon a great river, and to give to the seaboard city the dignified seclusion of an inland town. I believe this power, with the ineffective safeguards of this bill, is too vast and too dangerous to be wielded by any political government, and that it is likely to lead to the destruction of cities and to ultimate Government ownership of railroads over the pathway of confiscation.

There is no essential analogy between this proposition and the control which municipalities exercise over those services which use the public streets, or even such control as States, the mothers of these corporations, have attempted to exercise over their children. The National Government is a vastly greater engine than are the subordinate governments and the constitutional safeguards against encroachments by it are far less explicit and effective.

The looting propensities sometimes shown beyond question by cities and States have been effectively restrained, but when the National Government invades private property, when the pecuniary interests of the far greater number appear to be adverse to the rights which are invaded, when the demagogue, ever ready to bribe the people in the mass with the money of somebody else, puts himself on the platform that the charges of the railroads should be reduced, and when the decree is finally registered under the authority of Congress, and the very air vibrates with the demands of a public opinion, or rather of an aroused public appetite, who imagines that the Supreme Court will stand between the National Government and its victims? Unfortunately there is an undeniable tendency for the court to uphold what is called the political department of the Government and to sanction any policy upon which it may enter. If it could support the contention that we could tax one portion of American territory by a different system of imposts and excises than were levied upon another portion, and uphold this un-American doctrine in contradiction to the voice of John Marshall, speaking for a unanimous court, affirmed as he was by a unanimous court a generation later, do you imagine that the owners of a railroad will be heard against the National Government acting under its imperial claims of regulating commerce and of promoting the general welfare?

If the Government is to require a set of men using their own property to render a service at a price to be fixed by the Government it should guarantee them against any loss which such a price would entail. To do otherwise would be shameless tyranny, and yet, as a practical question, is it conceivable that any bill having that object in view could ever pass Congress? If we are to have Government ownership, it is more in accordance with my notions of justice frankly to avow it at the outset and have the Government take the railroads off the hands of their owners at their fair value. That, I understand, is the programme of the fascinating gentleman who is now the leader of the Democratic party. But the policy which I believe is

likely to be the outgrowth of this bill in its present drastic form will have in it no such an element of justice. The Commission which you endow with such transcendent power will sooner or later inevitably become a political body. It will respond to public demands for lower rates. The gentleman from Florida gave a startling proof of this tendency in his eloquent speech in favor of this bill when he cited a law case which showed that his own State had fixed railroad rates below the cost of operation. If that course was taken by an old and conservative State like Florida, what could be expected from the more radical States of the Union? Railroad securities would, under such a policy, gradually decline in value. The public will forget the conditions of things existing one or two decades in the past, or, if it remembers, its conscience will be sufficiently hardened by this policy to respond to vague appeals to seize those great national highways in the interests of national symmetry, and perhaps in the interests of civilization, a plea that has been worn threadbare in our time, and the present generation would, I believe, see the railroads owned and operated by the Government.

I for one do not believe in Government ownership as a matter of sound policy. If the railroads were given to the Government I believe their operating expenses alone would make the rates for transporting freight and passengers greater than the rates prevailing to-day. It is notorious that the services which the Government now performs are much more expensive than similar services conducted by private enterprise. I have great faith—and no one can have greater—in the ability of the American people to perform those governmental functions which a great incorporation like them is fitted to carry on, but I have no faith in the ability of that great mass of people, or of any other great body politic, to conduct through the agencies of government a vast and complicated business. Our railroads have enlisted in their creation and management the genius of great captains of industry, with which no talent in the public service is at all comparable. How would your new railroad managers be chosen unless for their prominence, perhaps, in the dominant political party? The height of their administrative character would very likely appear in detecting stealing on the part of your conductors, or men handling the money, and in discovering such violations of good morals as Mr. Bristow was responsible for unearthing. The men who did the work upon your railroads would, at the best, be selected by some form of civil-service examination, certainly not an ideal method, but a method much preferable to selection upon purely political grounds.

You would have a mechanism for appointing and watching and discharging your men whose operation would present nearly as formidable a problem as the operation of the railroads themselves, and I venture to say that society would stand aghast at some of the disclosures that would be made. The notion of equality upon which our Government is founded would lead into unreasonable ventures. One locality would demand substantial equality in rates with another without regard to the distance of transportation and would demand also the same service of express trains. If you want an illustration, take your rural delivery. The routes are no longer selected on purely business principles and with reference to their ultimately paying the Government the cost of operation, but the principle of equality of which I have spoken leads us to deliver the mail to the man isolated upon a hillside 5 miles from the post-office largely on the theory that he has the same right to have the Government deliver his mail as does the man who lives near the post-office, and the result is you have a rural delivery to-day having little reference to business principles and a great and growing expense saddled upon the Treasury. What reason is there to think that the Government would not conduct railroads upon the same principle? Then the ownership of transportation lines would give the National Government the ready means to usurp the insignificant powers remaining to the States. One party would demand that the railroads should not be operated on Sundays, another party would contend that the Government should not transport intoxicating liquors, still another would claim that veterans or other classes should ride free, and others would urge that men engaged in kinds of business at the time obnoxious should not be permitted to ride at all, and you would enter upon an era of extravagance, of favoritism, and of centralization of power at Washington which would be subversive of our Government or would radically change its character. Take off the lid from this Pandora's box and you will see everything escape except hope.

It is alleged as a reason for this legislation that rates have slightly increased in the last five years. That depends entirely upon what you accept as your standard. The man who deals in any of the ordinary commodities of common use can buy more transportation with a given amount of his commodity to-day than he could five years ago. In other words, treating transportation as a product, it is relatively to other products cheaper to-day than it was five years ago; for while commodities in general have during that time risen about 20 per cent in price, transportation has risen about 4 per cent. And this entire increase of 4 per cent is accounted for by the increase in the wages the railroads pay their men. What will be the first step by the engineers of this rate-fixing device? They must justify the proceeding by cutting down rates or there will be no public benefit from their standpoint. That in turn will compel the railroads to reduce the cost of their service, and if they can not reduce the price they pay for steel and ties they will of necessity be compelled to reduce the wages of labor, and the benevolent design of the manufacturer of leather or pig iron to secure lower rates and greater profits for himself will be attended with wage cutting and possibly strikes and general public inconvenience.

In a government like this a great deal should be left to the play of industrial forces. If the Government shall impose upon itself the guardianship of men in their business relations you will get a hard and fast and rigid system, incapable of expansion, beneficial to nobody, and in restraint of individual enterprise. Those industrial forces fight the battle of society and make progress possible. On the one side are the managers of great railroads, on the other side a large mass of trained men, organized and determined and able to secure fair returns for their labor.

It will be far better for society to let the natural struggle go on between railroads, employees, shippers, and localities than it would be to set up a little machine deity called a commission, with at the most only a governmental interest and with a mandate to supersede the laws of nature and still those great industrial energies which are as necessary to the health of society as the movements of tides and currents are to the sweetness of the sea.

Granted that our condition as a nation is not ideal, it is as nearly ideal as that of any great people that ever existed, and it is so because of the amount of freedom for the play of natural forces. If the Government intervenes, instead of the economic antagonism between employers struggling for cheaper transportation and the employed struggling for higher wages, very likely you will have an antagonism of a more deadly sort, and the conflict may be waged between your workingmen and the cannon of their Government upon the banks of some American Neva.

Are governmental commissions infallible, or do they become infallible by giving them large salaries, as you propose in this bill? Your Railroad Commission is under the ban, and the Administration measure introduced by the distinguished gentleman from Iowa provided for its extinction. Less than two years ago the President appointed a canal commission of seven members, with salaries of $12,000 per year—even more magnificent than the salaries in this bill—and yet he is now asking you to abolish it; and if this Commission is to complete the work of building the canal on the scale of expense on which it has thus far proceeded, the American people may have ample cause to wish that this "governmental function" had also been delegated to private capital, at least until the canal should have been built, and then come down heavily with threats about the "day of judgment," which we heard on this floor yesterday against the misguided wretches who have invested their money. And yet a commission is quite good enough in cases where individual American citizens are to pay the bills.

I am opposed to this bill because of its tendency tremendously to increase the power of the Government at Washington. The enormous concentration and pressure of power involved in the attempt to have the National Government run our railroads, and, as a result, those great engines that produce the articles of interstate commerce, would be to engender here a heated center of despotism destructive of the last appearance of individual freedom. Liberty is only compatible in this country with keeping the management of their affairs near to the people, where they can see how they are conducted. Distant as they are from Washington, they get merely the stage effects, and the actor who is set down to play all the virtuous parts in the play may be in fact the real villain. A system like ours, with the functions of government distributed among different organs and localities, is tolerant in the highest degree of freedom, and the unshackled liberty of millions of men employing with the least restraint the faculties God has given them is what has produced our marvelous development. Stifle by your puny statutes that splendid opportunity for enterprising human endeavor and you will profanely lay your hands upon the very shrine of American liberty. I do not care to see created at Washington

a "little father" as there is one at St. Petersburg. For my part I prefer the American system of distributed power, with as much as posible left to the individual, rather than the Russian system of centralized power.

It is said that this legislation is popular. The popularity of a measure is not always the test of its wisdom. Unfortunately, it is usually popular, for the time being, for those in high authority to marshal and gratify the predatory instincts of a people. Suppose Grant had listened to the argument that the greenback was good enough for the soldier who risked his life, and that, therefore, it was good enough for the bondholder who had risked only his money, and suppose he had started the printing presses in motion to manufacture money for the payment of the public creditor. Does anyone doubt that he would have been popular, even as popular as Franklin Pierce the day the latter was elected President by more than five-sixths of the electoral college? And yet Grant, instead of appealing to the passion of the moment, considered the real interests of his country and gave the people a chance to think and to form a real opinion, and by so doing he laid the foundation upon which was built the fairest structure of national credit ever reared by a nation. Did Grover Cleveland perform a popular act when he issued bonds in time of profound peace? And yet he saved the gold standard to his country. The fame that those in power win by pandering to the passion or the desire of the hour will redound to their ultimate dishonor and put them in the pillory of history.

Grant, if you want to, that our people to-day would not condone any act of injustice by the Government, yet we must remember that progress is not constant and there are ups and downs in the career of a nation. After the strain of producing great heroes and great statesmen it is natural that the national energies should become relaxed and engage themselves in bringing forth pigmies, and that the whim and vagary of the moment flitting across the mind of somebody in high authority should for a time usurp the place of the principles of enduring constitutional government. We may well hesitate to bequeath the policy of this bill as a legacy to such a time. Let us then permit this two-edged sword to sleep in its scabbard, at least until some one shall give a reason why it should be drawn. Let us make the amplest provision the law can make for the absolutely equal treatment of everybody by the railroads, but let us not enter upon the adventurous policy of this bill. I do not flatter myself that anything I have said can turn you from your purpose to pass this measure, but believing as I firmly do that it is charged with injustice toward many of our citizens whose means have been employed in a way vastly to benefit the country, and believing, too, that its operation would be injurious to the interests of the whole people, I find myself utterly unable to give it my support. [Applause.]

Mr. SIBLEY. I yield five minutes to the gentleman from Pennsylvania [Mr. ADAMS].

Mr. ADAMS of Pennsylvania. Mr. Chairman, in the small allotment of time it would be rediculous to attempt to discuss the merits of this bill as a principle, and as we are entirely excluded from the right of amendment, it would be equally useless to discuss it from that standpoint. But to follow in the vein of the gentleman from Massachusetts [Mr. MCCALL], who says that the great support of this bill is more popular in its character than as coming from the best interests of our country, I wish, in the short time allowed me, to present to this House the resolutions of the Board of Trade of the city of Philadelphia, which I have the honor in part to represent, and to show that this legislation is not in conformity either with that local board or with the resolutions of the National Board of Trade, which met in this city during the month of January and passed resolutions, after due consideration, as to the character of the legislation that they desired to be passed by this House.

Mr. Chairman, I yield to no man on the floor of this House in the recognition of the evils that exist on this question, but in my judgment there is no legislation that could come before this body next to the tariff that is so important and so far-reaching and will in its results prove the judgment that I advance in its effect upon the business interests of this country. It is most dangerous, in my judgment, to give to any board the right to name the railroad rates of this country, which will affect the value of every railroad security throughout it. It is most dangerous, and I believe that the safer law of competition would be a much more reliable doctrine on which to rely. Mr. Chairman, the resolutions of the Board of Trade of Philadelphia indorse the resolutions of the National Board, and not to read all of it, as I shall file it as part of my remarks, the close of the resolutions of the National Board of Trade says that—

Any abuses in transportation methods or operations which may, upon due inquiry, be found to exist, and to that end that power be given to the Intersate Commerce Commission to revise any rates found to be unreasonable or discriminating, the revised rates not to go into effect until the action of the Commission shall have been, upon review, confirmed by the circuit court of the United States of competent jurisdiction.

That is the judgment, not of your railroad managers or railroad presidents, but that is the judgment and the desire in regard to this legislation of a national board of trade not representing any local farms, manufactures, or any section, but representing the entire country, meeting in the national capital to decide after mature deliberation what legislation on this and on other subjects is best for the business interests of the country. That same National Board of Trade asked for the repeal of the amendment to the interstate-commerce law forbidding pooling, because, in their judgment, it was not for the best business interests of the country.

No such provision has been incorporated in this bill, and as, under the rule, it is not open to amendment, it can not be placed therein. The National Board of Trade, at its session, also resolved that the act to regulate interstate commerce should be amended, to wit, that private car lines and originating or terminal railroads engaged in interstate commerce be considered as common carriers and subject to the interstate-commerce act.

The Philadelphia Board of Trade, commenting upon the above resolutions, say, "Therefore, your memorialists, the Philadelphia Board of Trade, referring to the foregoing representations, earnestly recommend that amendments to the interstate-commerce law shall be so drafted as to be in harmony with the suggestions of the National Board of Trade, whose delegates come from all parts of the United States and whose recommendations are considered wise and conservative and tending toward securing conditions alike to the shipper and the transporter."

Mr. Chairman, in view of the fact that these are the expressions of opinion of the official representatives of the business interests of our country from all sections thereof, from the conservative standpoint which affects men guarding their own interests as against the alleged encroachments of the common carriers, I earnestly protest against the rapidity with which this legislation has been urged by the committee and is now being rushed through the House. When I appealed to the gentleman in charge of the bill for time to discuss its provisions, although we have had three days allowed for debate, I was told that one hour had been given to the gentleman from Pennsylvania [Mr. SIBLEY] to parcel out among those opposed to the bill. If freight rates were excessive in the United States and were pressing the shippers I could see some necessity for this hasty legislation. I insert a statement to show that such is not the case, but that there has been an almost uniform decrease in freight charges from 1870 to the present day.

In 1870 the average rate per ton per mile was 1.990 cents; in 1882, 1.240 cents; in 1887, 1.030 cents; in 1888, 1.001 cents; in 1889, 0.922 cent; in 1890, 0.941 cent; in 1891, 0.895 cent; in 1892, 0.898 cent; in 1893, 0.879 cent; in 1894, 0.860 cent; in 1895, 0.839 cent; in 1896, 0.806 cent; in 1897, 0.798 cent; in 1898, 0.753 cent; in 1899, 0.724 cent; in 1900, 0.729 cent; in 1901, 0.750 cent; in 1902, 0.757 cent; in 1903, 0.763 cent.

As to the rates, compared with those of other countries in a general way, they are one-third lower, in evidence of which I quote the following rates as compared with England:

*Specimen rates on coal.*

| | Ton. |
|---|---|
| South Wales to London, 162 miles | $1.79 |
| Lancashire to London, 194 miles | 2.08 |
| Glen Carbon, Ill., to Chicago, 276 miles | .76 |

*Specimen rates on grain.*

| | |
|---|---|
| Liverpool to London, 198 miles | 4.96 |
| Effingham, Ill., to Chicago, 199 miles | 1.79 |

*Specimen rates on agricultural machinery.*

| | |
|---|---|
| Liverpool to London, 198 miles | 5.95 |
| Chicago to Indianapolis, 183 miles | 2.30 |

(These rates are all "station to station;" comparisons in other commodities are complicated by the English practice of collecting and delivering.)

Mr. Chairman, in my limited time I can not go further into detail. In my judgment the bill is wrong in principle. No body of men who are not experts in the question, in my judgment, are competent to fix the rates with due discrimination in regard to the earning power of the railroads and so set the market value of such securities. This would be so far-reaching in its consequences as affecting the public at large, in life insurance companies, fire insurance companies, and other investments made by companies in which the people are either the stockholders or the beneficiaries, as too dangerous legislation to be railroaded through the House in this way, and for these reasons I can not give my support to this measure.

The CHAIRMAN. The time of the gentleman from Pennsylvania has expired.

Mr. ADAMS of Pennsylvania. Will the gentleman from Pennsylvania [Mr. SIBLEY] give me five minutes more?

Mr. SIBLEY. Mr. Chairman, I would like to give my colleague more time; in fact, I am willing to give away my time——

Mr. LITTLEFIELD. For the general good.

Mr. SIBLEY. For the general good. How much time does the gentleman from Pennsylvania [Mr. ADAMS] desire to complete his remarks?

Mr. ADAMS of Pennsylvania. Three minutes.

Mr. SIBLEY. How much time have I remaining, Mr. Chairman?

The CHAIRMAN. Nineteen minutes.

Mr. SIBLEY. I promised one gentleman fifteen minutes. I would like very much to oblige my colleague, but under the circumstances I could not do so.

Mr. ADAMS of Pennsylvania. I believe, under the rules, Mr. Chairman, I have the right to extend my remarks in the RECORD.

The CHAIRMAN. Under the rule the gentleman has the right to extend his remarks in the RECORD.

Mr. SIBLEY. Mr. Chairman, having yielded to others who deem hasty action ill advised nearly all the time allotted me, I shall not attempt any connected argument in the seven minutes unallotted by me. As has been said here by the gentleman from Massachusetts, more ably and more eloquently than within my powers of expression, I believe that this is the time for us to pause and ponder. While each man agrees with his neighbor that there exist abuses which demand correction, there may be an honest difference of opinion as to the method of procedure, and when a measure is brought up for consideration by this body in the limited time fixed for debate, and a measure upon which no two lawyers in this whole body can agree, either in definition or construction, it seems it is a pretty short time to enact legislation the most tremendous in its consequences since the slavery agitation of our fathers.

I believe that we ought to study this conscientiously and carefully, and if I do not agree with my fellows, whose opinions I generally honor and respect, it may be because I know more about the subject than they, or because possibly they know more about it than I do. Therefore I should like a larger opportunity of information for the basis of intelligent action, for my firm conviction is if this power shall be lodged in the hands of the Commission, then one decision already made by the Supreme Court must command the assent of all men, which says that if this Commission have such power—

> There would be no escape from the conclusion that it would be within the discretion of the Commission of its own motion to suggest that the interstate rates on all roads of the country were unjust and unreasonable; notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching every road and covering every rate.

That is the opinion of the United States Supreme Court. You can not establish a rate in my section and not have it applicable in all sections. If the rate of freight, living, as I do, 500 miles from the seaboard, is 18 cents a hundred pounds, do you think you who live in the Missouri or the Mississippi valleys, or still farther away, more remote from the seaboard, can have me pay 18 cents a hundred and you living three times as far, pay less than 54 cents a hundred? If the Commission establish what they determine to be a fair rate, it must apply uniformly in all sections of the Federal Union. By this legislation you throw the "apple of discord" into the nation. You array section against section. You favor those who are near the market and destroy those who are remote. The law of politicians will never work more beneficently than the great commercial laws under which our people have grown to be the wonder of the world. You limit not alone the distance to which may be shipped the products of Pittsburg, you create new industrial centers for manufacture and distribution. No commission can fix any rate but a uniform rate.

When you enforce that rate west of the Mississippi River you have put it outside of the power of those for whom you are legislating to export another bushel of wheat or another bushel of corn. Either the rates to the seaboard must be reduced to a figure which will require a tremendous cut in the wages of employees and forbid any return to invested capital, or a rate which forbids products to find an export market. It will disturb values. It will raise the price of some real estate near markets, and it will diminish the value of the farms in any section just in proportion as they are remote from market.

Mr. Chairman, I would like to make a speech on this topic, for I think I have tried to study it to some extent and have tried to understand it. But there are other gentlemen who desire time, and time is what the country wants.

We all desire the best. Men on both sides of this Chamber believe that the President would appoint high-minded men, would control them in a high-minded manner; but we know not what may be the disposition or the will or the aim of those who shall follow him. Whenever we have entered this door and established the principle that a government by its legislation can determine the prices of the products of my farm or my factory, then it is my desire that the Government shall own my farm and my factory. I no longer wish the responsibility for its success. And yet in two days, one to be devoted to counting the electoral vote, men from all callings of life, principally lawyers—few of us having much experience in practical affairs, certainly not in transportation affairs—are going to determine what shall be the disposition of twelve billions of dollars worth of property.

You people of the South and West whose territory is yet undeveloped, you people who need enterprise and capital to go out and build new highways and arteries of commerce in your yet undeveloped sections, are going to put a barrier in front of them because of hasty and possibly of ill-advised action.

I think it a fair statement that fully one-third of those who favor this measure would favor still more heartily Government ownership. In no country on the globe are rates of freight so low as in our own land. In fact, they are less than one-half of those prevailing in England and less than one-fourth the rate prevailing in any country whose railroads are owned and operated by the government. In no nation are there any railroads which rival in any respect our own. Rate fixing by commissions, wherever tried, has resulted in government ownership, and in every instance at an increased cost to the shipper and a higher rate to the taxpayers, and it remains to be shown where one single benefit has accrued. I shall hope that before we shall be wholly committed to this course that a commission shall be appointed to inquire into the subject and present carefully drawn measures which will correct the evils and preserve the good.

How much time have I remaining, Mr. Chairman?

The CHAIRMAN. The gentleman from Pennsylvania [Mr. SIBLEY] has twelve minutes remaining.

Mr. SIBLEY. I would like, with the consent of the gentleman from Iowa [Mr. HEPBURN], to reserve that time. I have promised it to gentlemen whom I do not see present upon this occasion.

Mr. HEPBURN. I will yield to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Chairman, the distance from Boston to Montgomery, Ala., by rail is 1,281 miles. The distance from Chicago to Montgomery is 748 miles. The rate on first-class freight (Southern classification) by all rail from Boston to Montgomery is $1.26 per 100 pounds. The rate from Chicago on the same class is $1.38 per 100. Chicago is 533 miles nearer to Montgomery than is Boston, but the rate is 12 cents per 100 less from Boston than it is from Chicago.

The rate on fifth-class freight from Boston to Montgomery is 66 cents per 100, and on the same class from Chicago is 67 cents per 100. Although the distance from Chicago to Montgomery is only a little more than half the distance from Boston to Montgomery, yet in each case in classes 1, 2, 3, 4, and 5 of the southern classification the rate from Boston is less than the rate from Chicago.

The distance from Boston to Atlanta is 1,106 miles. The distance from Chicago to Atlanta is 733 miles. The rate from Boston to Atlanta, all rail, on the first class is $1.17 per 100, and from Chicago to Atlanta $1.38 per 100. Chicago has a differential in her favor over Boston of 373 miles in distance, and Boston has a differential over Chicago of 21 cents per 100 in rate. The rate on fifth-class freight from Boston to Atlanta is 62 cents all rail, and from Chicago to Atlanta 67 cents, and in each of the classes 1, 2, 3, 4, and 5 of the southern classification the rate from Boston to Atlanta by the all-rail route is considerably less than from Chicago to Atlanta.

The same condition of affairs prevails as to the greater portion of the southern and southeastern territory. The rates from Boston, New York, Philadelphia, and Baltimore to points south of the Ohio and Potomac rivers and east of the Mississippi are very much less in proportion to distance, and in most cases less, in fact, than they are from points in the manufacturing centers of the middle Northwest.

In the rates which I have given to Atlanta I have referred to the rates effective on the 1st of this month. Prior to that time the rates were somewhat higher. On February 1 a reduction was made of 9 cents per 100 on first-class freight from both Boston and Chicago to Atlanta, but the reduction of the rate did not tend to do away with the discrimination against Chicago and in favor of Philadelphia, New York, and Boston, but on the contrary, emphasized such discrimination by making the per-

centage of such discrimination even greater than it was under the old and higher rates.

The rate from Lincoln, Nebr., on wheat consigned to New York is 38½ cents per 100 pounds and on wheat for export consigned on through bill of lading and passing through New York is 34 cents per 100, while the rate from the same place on the same article consigned to Galveston, Tex., is 46½ cents per 100, but if consigned on through bill of lading through Galveston for export is only 23 cents per 100. In other words, the domestic rate on wheat from Lincoln, Nebr., to New York is 38½ cents, and to Galveston 46½ cents, while the export rate from Lincoln to New York is 34 cents and to Galveston 23 cents.

The domestic rate on corn from Omaha to Galveston is 35½ cents, while the export rate on corn from Omaha on shipments coming from beyond Omaha is 13½ cents per 100.

The rate on cotton piece goods from New York to San Francisco by rail is $1 per 100. The rate from Chicago to Salt Lake City for the same goods is $2.50 per 100, and the rate from Chicago to Denver is $1.75 per 100. The goods which go from New York to San Francisco go over the same line and on the same train for $1 per 100, while the same class of goods on that train is charged from Chicago to Salt Lake City $2.50 per 100.

The rate from New York to San Francisco on canned goods is $1 per 100, and from Chicago to Reno, Nev., is $1.73 per 100.

The rate on first-class freight from New York to San Francisco is $3 per 100, and from Chicago to Reno, Nev., $3.90 per 100, and from Chicago to Salt Lake City $3.10 per 100.

The rates on practically all shipments emanating east of the Missouri River to the Pacific coast are the same whether they start from Portland, Me., or from Omaha, Nebr.; and in all cases, practically, the rates are less to the Pacific coast points than they are to the local points for a long distance this side of the Pacific coast points, although on the same roads.

For example: The rate on paint in carload lots from Chicago to Spokane is $1.21 per 100, while if hauled 450 miles farther to the Pacific coast the rate for the entire distance is only 90 cents per 100.

The rate on vinegar from Chicago in car lots to Hot Springs, Ark., is 33 cents per 100, while the rate to Wichita, Kans., a shorter distance, and in the same general direction, is 48 cents per 100. The rate on the same article from Chicago to Birmingham, Ala., is 42 cents; to Atlanta, 58 cents; while to Mobile it is only 31 cents. While the rate on this article from Chicago to Wichita, Kans., is 48 cents, the rate to San Antonio, Tex., is but 50 cents. According to the freight schedule, if vinegar can be delivered from Chicago at Denver, Colo., at 7 cents per gallon, it can also be delivered from Rochester, N. Y., to Seattle at 7 cents per gallon.

The rate on glucose from Chicago to Omaha is 20 cents per 100. Glucose is made wholly from corn. The rate from Chicago to Omaha on manufactured vinegar, made wholly from corn, malt, and rye, is 27 cents per 100. The rate on glucose from Chicago to New York is 20 cents, but the rate on vinegar for the same distance is 29 cents. Glucose is worth about 16 cents per gallon, and vinegar about 6 cents. Both are made largely from the same material. Glucose is more valuable than vinegar. The cost of carriage and the danger of leakage are the same, but the higher rate is put on the cheaper article.

A gas mangle for laundry work, when shipped from Chicago west with a belt-power header on it, takes a rate of one and one-half times first class, while the same mangle with a hand crank on it goes as fourth class.

The Chicago and Northwestern Railway and the Chicago, Milwaukee and St. Paul Railway cover most of the territory leading from Chicago and Milwaukee to the central Northwest. Formerly coal was principally transshipped at Chicago, but these two companies put into effect a preferential rate in favor of Milwaukee of 25 cents per ton, which operates, it is claimed, solely in the interest of Milwaukee shippers of coal. Chicago still competes for business, but as most of this coal comes by lake to both Milwaukee and Chicago the business is unfairly and unjustly hampered by the preferential rate in favor of Milwaukee.

The rate from Milwaukee to all Missouri River points is 25 cents per ton less than it is from Chicago, although the route is not direct and although it is more expensive to haul the coal from Milwaukee to Missouri River points than it is from Chicago over roads which are practically double tracked.

The rate on hard coal from Pennsylvania to Chicago is $3.50 per gross ton. On soft coal, from the same general district by the same route, $2.05 per ton; while if this same coal is shipped west from Chicago, the rate from Chicago—say, to Buffalo Lake—on the St. Paul road is $2.25 per ton for hard coal and $2.40 for soft coal. The rates east of Chicago are much higher on hard coal than soft coal, and the rates from Chicago northwest are higher for soft coal than for hard coal.

I might multiply indefinitely instances of apparent unreasonable rates or discrimination of rates in favor of or against certain localities or commodities. I do not wish to be understood as saying that these discriminations are unjust. I do not know. It must be perfectly apparent to anyone that water rates have and will continue to control rail rates with greater or less degree. I wish to discuss later in my argument the general subject of principles (or rather the lack of principles) upon which railroad rates are established. But the mere fact of the seeming gross discrimination in rates in favor of one locality and against another and the mere belief on the part of shippers that they are unjustly dealt with are sufficient reasons for giving to some disinterested body the power to hear all the evidence, consider all the circumstances, and decide upon the propriety and reasonableness of the rates as made.

There may be a good and sufficient reason why the rate from New York to San Francisco shall be less over the same line of road than the rate from Chicago to a point this side of San Francisco. Whether competition may force this condition or the necessity of the railroad to protect the business interests at each end of its line and give to the merchants at each end a fair proportion of business might also be a sufficient reason I do not undertake to pass upon. I do not think the shippers of Chicago or the shippers of San Francisco ought to have the privilege of determining the question, which, of course, each side would determine in favor of their own city, but is it wise to permit the railroad company to have the exclusive say? Is it safe to trust wholly to the judgment of the railway officials who must decide without that full hearing of both parties to the controversy, which can be had by the Interstate Commerce Commission or by the courts?

I have given thoughtful study to this subject for a number of years. I formed the conclusion years ago that it would be wise to confer upon the Interstate Commerce Commission or some other governmental body the power to pass upon a particular rate which is complained of, and to determine, after a full hearing, whether that rate is unreasonably high or unreasonably low, whether it discriminates against one commodity in favor of another or whether it discriminates against one locality in favor of another.

If we could stop there I think the legislation would have been enacted long ago.

In one of the first speeches which I had the honor to make in this House, in discussing and opposing the antiscalping bill, I said, on December 7, 1898:

> Mr. Speaker, I should be glad to see the interstate commerce act thoroughly revised and amended. I should not object to a proper provision in such revised act concerning the matter of ticket brokerage. I am not here for the special purpose of defending ticket scalping or of denouncing railway corporations. A few years ago the so-called "interstate-commerce law" was enacted. It was believed to confer certain powers of railroad legislation upon the Interstate Commerce Commission. The merchants, the business men, the jobbers, the men who have large business, and the men who have small business, nearly all hailed it as a deliverance from the doubt and discrimination of uncertain and special railroad rates. But the Supreme Court of the United States has gone through that law from time to time and cut out all of its vital parts. Nothing remains but the skin and bones, and I think some of the bones may be missing. The mercantile associations—nearly all of the business men—of the country have been for several years now applying to Congress to grant them relief by so amending the law that the national Commission may be given authority to prevent grossly unfair charges and grossly unjust discrimination.

And I endeavored to discuss somewhat fully and at length at that time the effect of the decisions of the courts and the need of additional legislation.

But, Mr. Chairman, the longer I have been in this body the more conservative I have become in regard to new schemes in legislation. I believe just as fully as I did at that time in the need of additional power in the Commission, but I can see more clearly now than I did then the danger which may lurk in the conferring of such power if we either grant too broad a power or if the Commission should undertake to exercise its power in too broad a manner.

The difficulty has been not in the desire to enact legislation which is needed, but in the impossibility up to the present moment of drafting language giving power which ought to be conferred and which would stop there. I have served for eight years on the Committee on Interstate and Foreign Commerce of this House. We have had numerous hearings upon this subject. I have never seen a time when it was not the earnest desire of the members of that committee to report to this House a bill which would effect the purposes which we desire to effect, if that can be done without going far beyond what any of us desires to do.

WHAT THE SHIPPERS ASK FOR.

I beg leave to call your attention to what the shippers of the country have asked for, and to what the President has, in his message, recommended. There is a very large and influential body of the most prominent business men of the country asso-

ciated under the name of the "Interstate Commerce Law Convention," of the executive committee of which Mr. E. P. Bacon, of Milwaukee, is the chairman.

In a circular letter which Mr. Bacon issued, and which has been sent to members of Congress, he says:

The proposed legislation has been referred to in the press to a considerable extent as conferring upon the Interstate Commerce Commission the "rate-making power," which is an utter perversion of what is contemplated. * * * I know of no one who desires to have the Commission invested with power to make rates primarily for the railroads of the country or who believes that it is possible for any body of men smaller than that now engaged in the work to do it. Nobody that I know of proposes to take the initiative in rate making from the hands of the railroad officials now exercising it, where it properly belongs.

In his statement before the Senate committee, Mr. Bacon said, in reference to the extent of the order to be made by the Commission under the Nelson-Corliss bill, in answer to a question, as follows (p. 22 of hearings):

Senator DOLLIVER. Does the order of the Commission contemplated here apply to the individual only or to the classification?

Mr. BACON. Simply to the individual complaint. The complaint may, however, be in relation to an unjust and unreasonable rate or to an unjust and unreasonable classification.

And again (p. 25 of hearings):

Senator CLAPP. What the Senator means, as I understand, is how far can the Commission upon that complaint take into account the effect of modifying that rate as to other cases? That is what the Senator is referring to.

Mr. BACON. The Commission takes into consideration the relation of that rate to other rates and determines largely upon that relation as to reasonableness or unreasonableness. It has no power to order a general reduction. It can only order a change in the particular rate complained of in each individual case.

Senator FORAKER. Why not make the rate for every shipper, not for the one shipper.

Mr. BACON. The Commission can go no further than to change the rate in the particular instance where complaint has been made.

Under date of Milwaukee, Wis., December 28, 1904, Mr. E. P. Bacon sent out a printed circular giving an opinion of the Industrial Commission, in which it is stated:

Such is the legislation proposed in the Cullom bill. Under it, as at the present time, the courts remain the final arbiters in contested cases upon appeal. The railroads are still, as they have been in fact since 1887, left to promulgate their rates and to manage their business. The only innovation is that when a rate has been once adjudged by the Interstate Commerce Commission to be in violation of the act to regulate commerce, the carrier may be compelled to modify its rates accordingly. There still remains the right of appeal to the courts. The necessity of this is recognized on all sides, since no single body of men can be omniscient and infallible.

In its last annual report also the Interstate Commerce Commission made this statement (p. 7):

The amendments to the statute recommended by the Commission involve no fixing of whole tariffs of rates in the first instance or at any time.

And again (p. 6):

It is equally plain that the publication of established rates and constant adherence thereto would constitute no adequate means of relief to injured shippers and localities if the judgment of carriers in fixing their charges could not be corrected upon proof that a particular charge is greater than should in reason be exacted.

And again:

The Commission may find, after careful and often extended investigation, that a rate complained against is unreasonable and order the carrier to desist from charging that rate for the future, but it can not, though the evidence may and usually does indicate it, find and order the unreasonable rate to be substituted for that which has been found to be unlawful.

And again (p. 8):

It seems appropriate to allude to what seems to us persistent misrepresentation on the part of many who are interested in opposing this legislation, that the amendments desired would confer upon this Commission the power to arbitrarily initiate or make rates for the railways. * * * No such power has been asked by or is seriously sought to be conferred upon the Commission * * * the amendment heretofore and now recommended by the Commission as to authority to prescribe rate upon complaint and after hearing would confer, in substance, the same power that was actually exercised by the Commission from the date of its organization up to May, 1897.

And the Commission states that what it could do if such authority were granted would be as follows:

After service of complaint upon the carrier or carriers, after full hearing of each carrier and shipper interested, and after careful investigation, a report and opinion would be rendered, and if the decision should be against the carrier an order would be entered directing it to cease and desist from charging the rate complained of and to substitute therefor a rate found, upon the evidence before the Commission, to be reasonable and just.

In his statement, before the Interstate and Foreign Commerce Committee in April, 1902, printed in hearings before that committee (p. 197), Judge Knapp, chairman of the Interstate Commerce Commission, said:

Under the present law the carriers exercise, without restraint, the initiative in rate making. They are free to put in just such tariffs as they see fit. They are under no legal restraint whatever in that regard, and there is no proposition to change the law in that respect. I do not advocate, and so far as I am aware no member of the Commission has ever advocated, that the initiative in rate making should be taken away from the carriers and given to the Commission or any other tribunal. So we assume that whatever is done in the way of amending the present law will not, in any respect, change this provision in that regard, and that carriers will continue to be free to exercise entirely the initiative in rate making. They will be free to put in just such tariffs as accord with their judgment or their interests.

He further said (p. 270):

All the Commission can do now is to say, if it so finds upon the facts, if it is warranted in so finding, "This thing you are doing is wrong, and you must stop it." That is all we can say. And I am assuming in that, Mr. MANN, that the Supreme Court will sustain that authority whenever the precise question comes before it.

It has not done so yet, but I assume, because I firmly believe that if the rate complained of is a dollar and the Commission after this inquiry, in the way I have described, says a dollar is unreasonable and therefore violates the first section of the law and makes an order requiring the carrier to cease and desist from thereafter charging that rate, I believe the Supreme Court will affirm the authority of the Commission to make such an order. * * *

The result, of course, is that after all this elaborate investigation, which may consume considerable time and involve considerable expense to the parties, the Commission can go no further than to condemn the particular thing complained of without being able to order something to be put in substitution which shall remove the grievance; and, of course, in such a case as I have named, if we could condemn a rate of a dollar, the order of the Commission could be complied with by making that rate 99½ cents.

Now, all that is proposed is that in such a case as I have named, in order to give the Commission jurisdiction at all, there must be a formal complaint served on the carriers, opportunity for them to answer, and a full hearing conducted, with all the formality of a judicial inquiry. Then if the Commission, in such case and upon the facts thus disclosed, reaches the conclusion that the rate in question is wrong, it shall have authority to name the rate which it thinks would be right to be put in place of the one in controversy.

In the address delivered by John D. Kernan before the St. Louis Interstate Commerce Law Convention, in October, 1904, he said (p. 16 of proceedings of that convention), referring to the Cooper-Quarles bill:

It will be observed that under this act the entire initiative of rate making is properly left to the carriers. The Commission itself can make no order except upon complaint and after hearing and determination. It can itself undertake no rate making at all, except when its intervention is sought to pass upon a rate already made by the carrier and challenged by formal complaint. This reduces the power of the Commission to that minimum of interference with rate making that serves the double purpose of leaving carriers free to make their own rates and at the same time of affording to the public, through the Commission and the courts, reasonable protection against abuse by the carrier of its power and opportunities.

In October, 1904, Freight, the editor says (p. 134):

We do not advocate conferring on the Commission the original rate-making power, but merely the power when a rate is complained of as being unfairly high or unjust to decide what rate is fair, its decisions to stand until upset by the courts. This is the whole idea of the Quarles-Cooper bill.

In January, 1904, the New York Board of Trade and Transportation adopted a report adverse to the Cooper-Quarles bill. In the April, 1904, number of Freight (p. 38) the editor, referring to this action, said:

The objection raised against the proposed bill to amend the interstate-commerce act, as introduced by Representative COOPER of Wisconsin, is frivolous in that it recites incorrectly that such legislation would confer the rate-making power on the Commission. On the contrary, the Cooper bill confers power only to suggest and to enforce rates for a temporary period, with the schedule being subject to review by the courts on the complaint of either the transportation company or the shipper.

In the article by Frank Barry, secretary Interstate Commerce Law Convention, in December, 1904, Freight (p. 233), he says:

The Quarles-Cooper bill contemplates but one thing—that the Congress, through a commission, shall correct carrying charges which are found, after full and fair hearing of the parties at interest, to be unjust or unlawful. * * * The bill goes no further. It does not endow the commission with power to make rates primarily; such authority, under existing conditions, is unnecessary and inadvisable, if not impracticable. Nothing further is desired nor contemplated than a corrective or regulating agency within the Government.

JUDGE CLEMENTS, INTERSTATE COMMERCE COMMISSIONER.

In the report presented by Judge Clements, as chairman of the committee on railway legislation, at the sixteenth annual convention of the National Association of Railway Commissioners, held in Birmingham, Ala., November, 1904, he said:

That there shall be no misconception, it should be again stated that the present public demand is not that the Federal Commission shall fix whole tariff of rates in the first instance or at any time, but simply that when a rate is complained of by a shipper or community and shown to be excessive, the Commission shall have authority to prescribe the reasonable rate indicated by the evidence in the particular case. * * *

PRESIDENT ROOSEVELT.

In his message to Congress, President Roosevelt said:

For some time after the enactment of the act to regulate commerce it remained a mooted question whether that act conferred upon the Interstate Commerce Commission the power, after it had found a challenged rate to be unreasonable, to declare what thereafter should, prima facie, be the reasonable maximum rate for the transportation in dispute. * * * While I am of the opinion that at present it

would be undesirable, if it were not impracticable, finally to clothe the Commission with general authority to fix railroad rates, I do believe that, as a fair security to shippers, the Commission should be vested with the power, where a given rate has been challenged, and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place; the ruling of the Commission to take effect immediately, and to obtain unless and until it is reversed by the court of review. * * * In my judgment the most important legislative act now needed as regards the regulation of corporations is this act to confer on the Interstate Commerce Commission the power to revise rates and regulations, the revised rate to at once go into effect, and to stay in effect unless and until the court of review reverses it.

The feeling of the shippers on this subject is quite well shown by a statement in a letter to me from B. F. Sipp, commissioner of the Coal Shippers' Association of Chicago, in which he said:

We feel that it is beyond constitutional authority to fix railroad rates, but we do feel that the Commission should be vested with power, where a given rate has been challenged and after full hearing found to be unreasonable, to decide, subject to judicial review, what shall be a reasonable rate to take its place, the ruling of the Commission to take effect immediately and to obtain unless and until it is reversed by the court of review.

WHAT THE BILLS HAVE IN FACT PROPOSED.

And yet, Mr. Chairman, most of the bills which have been presented to our committee have conferred the very power which both the President and the representatives of the shippers say they do not wish conferred upon the Interstate Commerce Commission. Some of the bills have conferred power which would simply have operated to the great disadvantage of shippers and been mostly in the interest of the railroads. We have had some bills before the committee which were distinctly drawn in the interest of a few of the great trunk-line railroads and which would have been, in my judgment, not only damaging to the smaller railways of the country, but would have fastened upon the shippers of the country the present rates, against which they are now so strongly contending. One of the worst of these bills is the so-called "Cooper-Quarles bill," and I make no reflection upon the gentlemen whose names the bill bears. No more high-minded men than they are in Congress.

The provisions of that bill were originally prepared by the general counsel of the Pennsylvania Railroad.

STATEMENT BY MR. BACON OF SIMILARITY OF COOPER BILL AND ELKINS BILL.

In the statement dated January 30, 1904, by Mr. E. P. Bacon, chairman executive committee Interstate Commerce Law Convention, to the Committee on Interstate and Foreign Commerce, in relation to the Cooper-Quarles bill (H. R. 6273), he made the following statement:

The Elkins bill, as originally presented to the Senate, was introduced through the instrumentality of the Pennsylvania Railroad Company, and its provisions coincided in the main with those contained in the Nelson-Corliss bill, and, satisfactory modifications having been made therein at a conference between the president and general solicitor of that company and representatives of the executive committee of the Interstate Commerce Law Convention, its passage was subsequently advocated by the latter as a substitute for the former; it being understood, however, that the committee mentioned should maintain a neutral attitude in relation to the provision legalizing pooling and authorizing the formation of traffic associations, on which there is a division of sentiment among the commercial organizations.

The bill now before you, H. R. 6273, "Further to define the duties and powers of the Interstate Commerce Commission," comprises the provisions of the Elkins bill, revised, as above stated, with the exception of the pooling and traffic association provision, which has been omitted. The clause limiting the operation of an order of the Commission to a period of one year has also been eliminated, and a clause has been substituted providing that an order may at any time be modified, suspended, or revoked by the Commission upon full hearing of all parties in interest. All the provisions contained in the present bill were contained in each of the several bills heretofore mentioned.

In his testimony before the committee of the House December 9, 1904, Mr. Bacon said:

In the present Congress, the first session of the present Congress, our committee secured the introduction of a bill based upon the Elkins bill. The Elkins bill, I will say, in addition to having been framed by the general counsel of the Pennsylvania Railroad, was amended at the suggestion of our committee by the counsel and the amendment approved by President Cassatt, and our committee then adopted it as a substitute for the Nelson-Corliss bill, and joined with the railways to secure its passage. But on the failure of that bill our committee in the next Congress—that is, the first session of the present Congress—secured the introduction of what is known as the "Quarles-Cooper bill." It is simply a redraft of the revised Elkins bill, revised as I have described, and eliminating the pooling section.

Mr. Bacon also said, in making the same statement, after referring to the introduction of the Nelson-Corliss bill in the Fifty-seventh Congress:

At the same time the Elkins bill was introduced in the Senate. That was in 1901, the first session of the Fifty-seventh Congress, that bill having been prepared directly and drawn personally by the general counsel of the Pennsylvania Railroad, Mr. Logan, who is now dead.

The vice-chairman of the executive committee of the Interstate Commerce Law Convention is Mr. Charles H. Seybt, of St. Louis, said to be a director in the St. Louis, Vandalia and Terra Haute Railroad Company, known as the "Vandalia line," a part of the Pennsylvania Railway system.

In a circular letter dated December 19, 1904, Mr. E. P. Bacon, as chairman of the executive committee, makes this statement:

This confidence in the Interstate Commerce Commission and the belief of leading railway officials that governmental supervision of transportation would not inure to the injury of the carriers was further evidenced during the second session of the Fifty-seventh Congress, when the original Elkins bill was introduced in the Senate through the instrumentality of the Pennsylvania Railroad Company. The provisions of that bill coincided in the main with those contained in the Nelson-Corliss bill, which was substantially similar to the Quarles-Cooper bill now pending, and, satisfactory modifications having been made in the Elkins bill at a conference between the president and general solicitor of the Pennsylvania road and representatives of this committee, its passage was subsequently advocated by both interests.

And yet, Mr. Chairman, because the Committee on Interstate and Foreign Commerce would not, without any hearings upon the bill, report out favorably the Cooper bill at the last session of Congress, or the beginning of this session of Congress, the members of that committee have been charged by Mr. Bacon and others with being practically in the employ of the railroad companies. I resent the charge or the insinuation, whatever source it may come from. Since I have been a Member of this House I have more frequently opposed legislation desired by railroads than I have favored it. No one in my family has ever owned a dollar of stock in any railroad company or in any corporation dependent in any way upon railroads. I have never been the attorney of a railroad company. I have never received a political contribution from a railroad company or from the officials of a railroad, either directly or indirectly, nor have I ever received any political support from any railroad company in any way whatever.

I ask no favors from railroads, and I consider myself under no obligation to them. And yet, if I thought their interests were jeopardized in legislation, I would quickly defend them. It is as much the duty of a Representative in Congress to protect the railroads from unjust assaults as it is our duty to protect the shippers from unjust railroad rates. It is our duty to act without bias and with impartiality to the end that, if possible, we may deal fairly and justly with all classes and interests, and, so far as we have power, require all classes and interests to deal fairly and justly with themselves and with each other.

BILLS GIVE TO THE COMMISSION THE GENERAL RATE-MAKING POWER.

It is provided in the Quarles-Cooper bill that the Interstate Commerce Commission may declare any existing railroad rate or rates to be unreasonable or unjustly discriminative and declare what rate or rates shall take their places, and the rates so determined by the Commission shall become operative within thirty days after notice, and the order putting such new rates into effect can only be modified, suspended, or revoked by the Commission upon full hearing of all parties in interest.

It is provided in the bill that this order may be made upon any petition which can be filed under the original act to regulate commerce. The Supreme Court of the United States has decided that under that original act one petition or complaint can be made alleging that the interstate rates on all the roads in the country are unjust and unreasonable, and that one general hearing can be heard covering all the rates on all the commodities to all points in the United States. So that, under the provisions of the Cooper-Quarles bill, if enacted into law, it would be possible in one order to fix the railroad rates throughout the United States, or, even if that should not be attempted, to fix them, say, between Chicago and all points between Chicago and the Pacific coast, or between Chicago and New York in the North and all points in the Southeast. It is quite certain that if the Commission be given the power it will very shortly be called upon to establish rates between various sections of the country. The Interstate Commerce Commission frequently entertains complaints which affect a large number of localities and a large number of roads.

In the Import Rate Case the New York Board of Trade and Transportation, as the original petitioner, and the Commercial Exchange at Philadelphia and the San Francisco Chamber of Commerce as intervening petitioners, were the complainants, and the railroads made defendant were the Pennsylvania Railroad, Pittsburg, Fort Wayne and Chicago, Pittsburg, Cincinnati and St. Louis, New York Central and Hudson River, Michigan Central, Lake Shore and Michigan Southern, Chicago and Grand Trunk, New York, Lake Erie and Western, Chicago and Atlantic, New York, Pennsylvania and Ohio, New York, Chicago and St. Louis, the West Shore, Delaware and Lackawanna, the Grand Trunk, the Wabash, the Baltimore and Ohio, the Philadelphia and Reading, the New Jersey Central, the Boston and Maine, the Louisville, New Orleans and Texas, the St. Louis, Iron Mountain and Southern, the Southern Pacific, the Union Pacific, the Northern Pacific, the Canadian Pacific, the Texas and Pacific, the Illinois Central, and the Lehigh Valley. (Re-

port of Interstate Commerce Commission, 1894, 8th annual, 148.)

In a petition filed by the Board of Trade of Chattanooga there were made defendants the East Tennessee, Virginia and Georgia Railway, the Norfolk and Western Railroad, the Old Dominion Steamship Company, the Western and Atlantic Railroad, the Central Railroad and Banking Company of Georgia, the Georgia Railroad, the Ocean Steamship Company of Savannah, the South Carolina Railway, the Clyde Steamship Company, the Cincinnati, New Orleans and Texas Pacific, the Baltimore and Ohio, the New Jersey Central, the Nashville, Chattanooga and St. Louis, the Pennsylvania Railroad, the New York, Lake Erie and Western, the New York and New England Railroad, the Delaware and Hudson Canal Company. (Interstate Commerce Commission Report, 1894, 168.)

In a series of petitions filed by the railroad commission of Georgia, and all decided together, there were made parties defendant the Clyde Steamship Company, the South Carolina Railway Company, the Georgia Railroad and Banking Company, the Louisville and Nashville, the Central Railroad and Banking Company of Georgia, the Richmond and Danville Railroad, the Georgia Pacific Railway, the Ocean Steamship Company, the Cincinnati, New Orleans and Texas Pacific, the Cincinnati Southern, the East Tennessee, Virginia and Georgia Railway, the Western and Atlantic Railroad, the Nashville, Chattanooga and St. Louis Railway, the Atlanta and West Bound Railroad, and the Western Railway Company of Alabama. (Report of Interstate Commerce Commission, 1894, 163.)

MAXIMUM FREIGHT-RATE CASE.

In the so-called "Maximum Freight-Rate case" (167 U. S., 479), decided by the Supreme Court of the United States May 24, 1897, in which case it was held that the Interstate Commerce Commission did not have authority to determine what should be a reasonable rate to be observed by a transportation company in the future, the complaints were brought before the Interstate Commerce Commission, respectively, by the freight bureau of the Cincinnati Chamber of Commerce and the Chicago freight bureau, and practically every railroad running from Chicago in the southerly direction, or lying south of the Ohio and Potomac rivers and east of the Mississippi, as well as various ocean steamship lines, were made parties defendant.

The Interstate Commerce Commission entered an order fixing the railroad rates upon nearly all classes of articles between Chicago and Knoxville, Tenn., Chattanooga, Tenn., Rome, Ga., Atlanta, Ga., Meridian, Miss., Birmingham, Ala., Anniston, Ala., and Selma, Ala., and also the rates from Chicago to the above-named eight points, and further provided that the defendants should readjust their tariffs of rates and charges from Cincinnati and Chicago to all other southern points so that they should be in due and proper relation to the rates specifically named in the order to the above-named eight points.

It was admitted and stated in that case that there was a necessary relation between the freight rates from Chicago and Cincinnati to southern points and New York and the north Atlantic seaboard to the same southern points, so that in effect the order entered by the Interstate Commerce Commission in that case directly affected if it did not directly require a readjustment of all freight rates between northern and southern points east of the Mississippi River, which of itself would have required an adjustment of freight rates throughout the United States.

In the opinion of the Supreme Court of the United States it is said (p. 509):

> There is nothing in the act requiring the Commission to proceed singly against each railroad company for each supposed or alleged violation of the act. In this very case the order of the Commission was directed against a score or more of companies and determined the maximum rates on half a dozen classes of freight from Cincinnati and Chicago, respectively, to several named southern points and the territory contiguous thereto, so that if the power exists, as is claimed, there would be no escape from the conclusion that it would be within the discretion of the Commission of its own motion to suggest that the interstate rates on all the roads in the country were unjust and unreasonable, notify the several roads of such opinion, direct a hearing, and upon such hearing make one general order reaching to every road and covering every rate.

HOW COULD RATES BE CHANGED AFTER BEING ONCE ESTABLISHED BY THE COMMISSION?

It might not be difficult for the Interstate Commerce Commission to decide at first upon rates to be charged between large sections of the country. They would necessarily take the existing rates as the guide for their decision. They might make some reductions. They might make some increases in rates in order to equalize them. But the making of the rates in the first order would be the least of their troubles and the least of the troubles of the railroads or the shippers.

Referring to the railroad commission of Texas, which does fix intrastate rates, Judge Prouty, one of the present Interstate Commerce Commissioners, is quoted in an article in June (1904) Freight, as saying:

> I do not believe an Interstate Commerce Commission modeled along the same lines as the Texas State railroad commission to be either feasible or possible. It would require a force of clerks too ponderous to be worked. It would require an amount of work that would be too staggering for any single body to take up. I do not believe that any one man, or any one body of men, could name rates to exist between all points in the United States and keep in close touch with the conditions, ever changing, that enter into the making of rates.

Last year there were filed with the Interstate Commerce Commission more than 160,000 new tariff schedules, including supplements and amendments of tariffs, but each one making some change in some published tariff or regulation, and in many cases one new schedule contained a great number of changes. Most of these changes of tariffs were made by the railways at the request of shippers or localities for the purpose of protecting or increasing the business of the shippers. In many cases tariffs were put into effect for the sole purpose of protecting the shippers of a locality from great loss. But under the terms of the Cooper-Quarles bill and most of the other bills which have been presented, when the Interstate Commerce Commission have fixed or passed upon the rates between, say, points north of the Ohio River and points south of the Ohio River, and entered an order in reference to those rates, it will not be possible for the railway companies, or any of them, even by agreement with the shipper, to change the rates thus established without the filing of a new petition before the Commission and a full hearing of all parties interested. "All parties interested" necessarily means all possible competitors and competing points, so that practically no change could be made in any tariff schedule which had once passed under the eye of the Commission and been overhauled by it without the circumlocution of a new petition and a new hearing. The Commission is now receiving new tariff schedules at the rate of about 500 per day.

I recently requested the Commission to furnish to me a memorandum of the changes in tariff rates filed with it any one day during a recent period. The reply of the Commission states:

> With regard to the possibility of showing all changes in rates made in the schedule filed in any one day, it may be said that while it might be possible to make such a showing, it would involve an enormous amount of work and would require a large portion of the clerical force of this office probably ten days or two weeks to accomplish. At the present time the Commission is receiving about 500 tariffs daily. While many of these schedules consist of only a few pages and in some cases only a single sheet, some of them are very voluminous.

In order to gain some idea of the number of tariff changes filed during the course of a year by some of the different railroad systems, I made a request upon the Commission for this information, and in reply received the following statement:

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE AUDITOR,
*Washington, January 19, 1905.*

Referring to the accompanying letter of Hon. JAMES R. MANN, M. C.:

The number of rate schedules applicable to freight traffic filed by the railways named during the year ending November 30, 1904, was as follows:

| | |
|---|---|
| Pennsylvania Railroad | 4,123 |
| New York Central and Hudson River Railroad | 1,561 |
| Illinois Central Railroad | 6,344 |
| Chicago and Northwestern Railway | 2,178 |
| Chicago, Rock Island and Pacific Railway | 3,375 |
| Chicago, Milwaukee and St. Paul Railway | 2,591 |
| Baltimore and Ohio Railroad | 3,925 |
| Louisville and Nashville Railroad | 3,330 |
| Northern Pacific Railway | 774 |
| Union Pacific Railroad | 789 |
| Wabash Railroad | 1,135 |

The number given in each case includes local and joint freight tariffs, supplements and amendments thereto, classifications, circulars, and, in fact, all issues which in any way affect freight rates. These figures may give an incorrect idea as to the actual number of rates filed by the roads named, owing to the fact that tariffs in some cases consist of only a single sheet, while in many cases they are in book form, comprising several hundred pages.

The total number of schedules filed during the year in question was 162,428, of which 143,982 were freight and 18,446 were passenger. While this is somewhat less than the number filed the previous year, it is much greater than the average for each year since the organization of the Commission.

While a considerable number of the tariffs filed contain few changes as compared with the total number of rates shown therein and are sometimes merely reissues, it is true that the great majority of the schedules filed contain more or less changes, either in rates or in rules or regulations; and it may be said that, as a rule, the greater the number of tariffs filed the greater the number of rate changes.

Respectfully submitted.

J. M. SMITH, *Auditor.*

CLASSIFICATIONS.

The power to determine as to the reasonableness and justness of freight rates and regulations in connection therewith necessarily involves the power and the duty to determine as to the classification of freight.

While the railroads maintain what are known as commodity tariffs which are applied to some few of the principal articles of shipment, such as coal, grain, live stock, salt, sugar, cement,

agricultural implements, steel rails, canned goods, etc., yet the vast number of different kinds of articles renders it inconvenient and impossible to make a commodity tariff for each separate article, and hence the different kinds of articles are classified.

There are three principal classifications of freight: The Official classification, the Southern classification, and the Western classification. There is also the New England classification and State classifications in the States of Illinois, Iowa, Georgia, North Carolina, Florida, and, to some extent, Texas.

The Official Classification Committee maintains headquarters in New York City; the Western Classification Committee, headquarters in Chicago; the Southern Classification Committee, headquarters in Atlanta.

The auditor of the Interstate Commerce Commission has prepared a very able forty-year review of changes in freight tariffs published as part 2 of Appendix G of the Report of the Interstate Commerce Commission of December, 1902, being the Sixteenth Annual Report. In this review the auditor says:

Official Classification No. 1 was issued April 1, 1887 (p. 16):

"Protests and applications for changes were at once received from shippers as well as from many of the railroads, and a revision of the first issue was almost immediately begun, resulting in the publication of Official Classification No. 2, on July 15, 1887. Applications from various interested parties, committees of shippers, and the railroads were constantly before the classification committee, the greater portion of which received favorable consideration. The consequent revisions in the classifications have necessitated frequent issues of this publication, the last being No. 22, of January 1, 1902."

And again (p. 32):

It is a part of the history of freight classifications that from the date of their adoption constant pressure is brought to bear upon carriers using them from all classes of shippers for a lower classification of the articles in which they have business interest. Prior to the year 1900 these demands were usually met by the carriers, resulting in frequent reductions in the leading classifications. * * *

The official classification contains six classes, under which are enumerated 9,370 separate items. The official classification covers the territory north of the Ohio and Potomac rivers and extending east from a line drawn from Chicago to the Mississippi River. On west-bound traffic from the East as far west as the Mississippi River the official classification supersedes the old west-bound classification.

It is considered that the making of separate rates on car lots is a reduction of freight rates because separate car-lot rates are always made by a reduction from the previously existing rates on that class of freight.

Under the old west-bound classification there were only 147 items with a car-lot rating, while in the existing official classification there are 7,348. Under the official classification there are also 6,529 more items which may be carried at car-lot rates than there were in the former east-bound classification.

The Western classification covers generally the territory west of the Mississippi River and west of a line from Chicago to the Mississippi River. There are 8,044 separate descriptions of articles in the Western classification, divided in the following classes: 1, 2, 3, 4, 5, a, b, c, d, e.

In 1890 in the Western classification there were 2,713 different items given carload rates. In 1902 there were 5,678 items given carload rates.

The Southern classification obtains east of the Mississippi River and south of the Ohio and Potomac rivers. It contains 3,664 items, divided in classes 1, 2, 3, 4, 5, 6, a, b, c, d, e, f, h.

The through or competitive traffic of the United States is divided into several well-defined sections, and these sections are as follows:

First. The territory north of the Ohio and Potomac rivers and east of Chicago and the Mississippi River.

Second. The territory south of the Ohio and Potomac rivers and east of the Mississippi.

Third. The territory west of Chicago and the Mississippi River.

Fourth. Competitive traffic to and from the Pacific coast.

No one will question that it would be greatly to the advantage of the people, as well as of the railroads themselves, if it were possible to make one uniform classification of freight in force throughout the entire country; but different sections of the country demand, in the interest of their local conditions, that the rate of freight which may obtain in one part of the country shall not obtain in another portion of the country on the same character of freight.

THE POWER PROPOSED IS TO FIX ACTUAL RATES, AND NOT MERELY MAXIMUM RATES.

Suppose the Interstate Commerce Commission be given the power, where rates complained of are unreasonable, to say what rates shall be put in force in their place. Not one of the bills now pending in Congress proposes to limit the Commission to fixing a maximum rate. It is conceded that the power to fix a maximum rate can not prevent unjust discriminations between either localities or commodities.

Chicago and Cincinnati complained in the maximum rate case that the rates from Chicago and Cincinnati to all points south of the Ohio and east of the Mississippi were too high, as compared with the rates from New York and Boston. That complaint will undoubtedly be made again when the Commission receives the power to fix the rates. It will thereupon become the duty of the Commission to examine into the reasonableness of the rates between Chicago and Cincinnati to southern points on the one side, and between New York and Boston to southern points on the other side, as well as the corresponding rates from southern points to these northern cities.

Thereupon, after a hearing, the Commission must enter an order either finding the rates then established to be reasonable, or, if found to be unreasonable, saying what are reasonable and just rates. That order will state, and must state, how the various articles of goods to be shipped shall be classed, and the order must practically either adopt the present southern classification which governs on such shipments, or else make a new classification or modify the existing classification. The order must then establish the rate from Chicago and Cincinnati and from Boston and New York to various-named southern points, and then establish the relative rates between the main southern points and other intermediate southern points.

This responsibility under any of the proposed measures can not be avoided by the Commission. The Commission is required to pass upon the reasonableness of any rate which any person or association may choose to complain of, and is required to have a hearing and enter an order determining the reasonableness of the rates complained of; and when any of the existing rates are found unreasonable must determine the rates to be adopted in place of those found unreasonable.

WILL THE BILL PREVENT THE LOWERING OF RATES?

The Commission at once, under the law, is thrown into the maelstrom of rate making throughout the country. I do not regard that it is impossible for the Commission to exercise this authority in the first instance; but suppose changes in rates become necessary, as they evidently do become necessary now, how will it be possible for a Commission, with only twenty-four hours in a day and only three hundred and sixty-five days in the year, to have hearings of all parties in interest on tariff changes, which now amount to 500 a day? Will not the result of this legislation, or any similar granting of such broad powers to the Commission, be that the Commission will accept practically in most particulars a slight reduction from existing rates and establish new rates with that slight reduction, and that these new rates thus established become practically as fixed as the reputed laws of the Medes and Persians?

The Interstate Commerce Commission, when it was first organized, appreciated the difficulties which would arise if it assumed the power of rate making. The Chairman of that Commission, Judge Cooley, was one of the most distinguished publicists and lawyers this country has ever produced.

In the First Annual Report of the Interstate Commerce Commission Judge Cooley said (p. 36):

The question of reasonableness of rates involves so many considerations and is affected by so many circumstances and conditions which may at first blush seem foreign that it is quite impossible to deal with it on purely mathematical principles, or on any principles whatever, without a consciousness that no conclusion which may be reached can by demonstration be shown to be absolutely correct. * * * And it has been shown that to take each class of freight by itself and measure the reasonableness of charges by reference to the cost of transporting that particular class, though it might seem abstractly just, would neither be practicable for the carriers nor consistent with the public interest.

In the Fourth Annual Report of the Interstate Commerce Commission, written by Judge Cooley, under date of November 29, 1890, it is said (p. 15):

If any court were to undertake to pass upon a question of reasonable rates as one of law it would be necessary to begin with this classification. It would be compelled to enter upon all the infinite variety of circumstances which influence the action of the carriers when they make it. It would necessarily undertake to give the proper force to each of those considerations, though it could only do this upon the discovery of some positive rule or rules of action leading it up to definite conclusions, such as no railroad manager and no public officer ever invested with authority of regulation has as yet been able to discover. A mere statement of the case shows how impossible it is that a question of classification should be one of law.

If all carriers were under obligation to grade their rates to the cost or value of their own services exclusively there would be more ground for contending that the courts might deal with the question of reasonable rates. * * * If the cost could be ascertained the court could apply the rule, its discretion in such cases being measured only by its judgment whether the carrier had or had not added to the cost too large a margin for profit. But a rule that should thus measure charges by cost would work an entire revolution in the business of transportation. * * * Nothing more disastrous to the commerce of the country could possibly happen than to require the rating for railroad transportation to be fixed exclusively by this one rule. But the consequences would be similar if any other single test of a carrier's charges

were to be applied, and if any two or three combined were made use of, the probability of injury to the country and of disaster to the roads would be only a little farther removed. * * * The whole subject is so exclusively one of discretion with the railroad managers and the officers of associations who are brought directly in contact with the business itself and with the people whom they serve that they are not expected to defer to legal counsel upon questions of classification, but would assume that such a question was one altogether aside from his proper province. * * *

When classification is made in the way explained it is very obvious that the rate imposed upon any single article of commerce, if it is challenged as unjust, can not be taken up by itself and its reasonableness determined without regard to what is charged upon other articles which are subject to transportation by the same carrier. No article is rated independently. No one article is rated from considerations that pertain to itself alone, and to determine whether the rate is reasonable it is necessary in every instance to go beyond the single article and consider the whole subject of classification and the whole business of the carrier under it. To challenge the charge for the carriage of a single article is to challenge to some extent the whole rate sheet, and calls for careful consideration of the question whether the rate to be charged to the one article is out of just proportion when all the circumstances and conditions which the railway officers must be supposed to have had in mind in making the classification and the rating are considered. * * *

It is only when the whole traffic of a carrier is taken into account and the rates of the several classes of articles are considered and compared that a judgment can be formed whether a low rate upon any particular article of commerce is likely seriously to affect the net returns from the whole. A court, therefore, in undertaking to pass upon a single rate as a matter of law must necessarily go to the very foundation of rating. It must place itself in the position of a carrier and substitute its own discretion and business judgment for that which has made the classification. * * *

After listening to these sage reflections of that venerable jurist and Interstate Commerce Commissioner, think what would be the result if the Interstate Commerce Commission should attempt to determine the freight rates from all points north of the Ohio River to all points south of the Ohio River upon this vast number of articles listed in the different classifications.

I am not seeking to deter Members from voting for the pending measure. I believe that measure is the best product that we can at present agree upon. I believe it is necessary that we pass some measure in order to correct existing hardships and discriminations, but I wish the Members of the House to understand (and I hope the country at large will understand) the difficulties and the problems which have confronted our committee in preparing this bill.

Under the pending measure the Interstate Commerce Commission, in this southern case which I have referred to, must determine what shall be the exact rate charged from Chicago to Atlanta, Montgomery, Knoxville, and other southern points, and must also at the same time determine the exact rate to be charged from New York to these same points, where shipments are made by rail or part by rail and part by sea. But the Commission has no authority to determine what the ocean rates shall be from New York to Charleston or Savannah or Jacksonville or Mobile or New Orleans or other seaport towns.

The railroads running from the northeast to the southeast may be ground between the upper and the nether millstones. Their rates may be raised and ought to be, in my opinion, in comparison with the rates from Chicago to these southern points. But whether raised or fixed as they now are, those rates by rail will be established and may not be departed from. The ocean steamship lines and the tramp steamers will not be controlled by these rates, and may at any time cut under the fixed rates of the railroads and take away their traffic. We might possibly control these ocean steamship lines, but it would be difficult, if not impossible, to control the tramp steamers by any published tariffs. The southern roads on the 1st of February put new tariff schedules into effect, making a considerable reduction on rates between the northern and southern points. Possibly this reduction would have already been made if the Interstate Commerce Commission had had the authority, but let it be remembered that when the Commission has once passed upon a set of rates it will be almost impossible to get those rates thereafter lowered, because of lack of time and opportunity for the Commission to hear the complaints.

The reduction of freight rates has usually come through long-continued contests for railroad supremacy or else through increase of the volumes of business and gradual reductions.

For instance, in the review by the auditor of the Commission, to which I have referred, is given a statement, as Table 73, of the freight rates charged for the transportation of wheat, corn, and oats from 52 different points in Kansas and Nebraska to Chicago from April, 1886, to April, 1902. This table shows a freight rate on wheat from Abilene, Kans., to Chicago in 1887 of 38½ cents per 100 pounds. Between 1887 and 1902 there were 58 different tariff sheets filed, showing 14 different rates, which, however, resulted in a rate on April 1, 1902, of 25 cents a hundred, a very large reduction from the 38½-cent rate of 1887. A similar reduction of rate is shown from each of the other 62 towns named on wheat, as well as a similar reduction for each of the towns on both corn and oats.

In Table 107 of the same review it is shown that the rate from Chicago to Colorado common points on cotton bags in 1889 was $2.05 a hundred pounds; in January, 1897, $1.07 a hundred, and April 1, 1902, 60 cents a hundred, and various other reductions and changes are shown on other articles for the same period of time. It appears from Table 110 of the same review that in 1897 the rate on cement from Chicago to Utah common points was 89 cents a hundred, and April 1, 1902, was 48½ cents per hundred.

It appears from Table 116 in the same review that the rate on dry goods from Chicago to Pacific coast terminal points on April 5, 1887, was $4.70 per hundred; from January 1, 1889, to July 18, 1892, the rate was $3.90 per hundred, and on January 18, 1900, the last rate given was $2.60.

It appears from the same review that the rates on canned goods (p. 159) from Pacific coast points to Chicago April 5, 1887, in carload lots was $1.55 per hundred; from March 10, 1888, to September 27, 1894, was never less than $1 per hundred; on April 1, 1902, the rate was 75 cents per hundred. The rate from Pacific coast points to Chicago on raisins from September, 1888, to April 11, 1893, in carload lots was $2.70 per hundred; in April, 1902, $1 per hundred. These reductions would have been almost practically impossible if the rates had ever passed under the scrutiny of the Commission exercising the power we now propose to confer.

It would be easy to multiply the number of reductions in rates of this character. If the Cooper-Quarles bill had been in effect the Commission would have been called upon to pass upon the rates between all of these points. They would have established some rate probably nearly commensurate with the rate then in effect, and certainly taking the rate then existing as the criterion for the establishment of the new rate. That new rate when established would probably be in force to-day, and instead of having a reduction, as has been the case, we would still be liable to be paying on these goods a much higher rate of freight than is now paid.

Do not understand me as stating that this is an insuperable objection to the enactment of this legislation. But when we enact legislation such as we now propose we should understand the attendant difficulties and accept the responsibility for the enactment.

The recommendation which was made to us by the President was that we enact a law to give to the Interstate Commerce Commission the power to decide whether "a given rate" is unreasonable, and, if so, determine the rate which shall take its place. That is not the legislation proposed by the Cooper-Quarles bill, nor is it the legislation proposed by the pending measure.

ANY NUMBER OF RATES MAY BE FIXED AT ONE HEARING.

Under the bill now before the House any person or association can file a petition or complaint alleging any number of rates to be unjustly discriminative or unreasonable, and when the Commission has its hearing upon this complaint it must decide as to all of the rates named in the complaint, and when it finds that "any existing rate" named in the complaint is unreasonable or unjust it must fix the rate to take the place of that unreasonable rate. And this finding may extend to each one of the rates named in the complaint, however many there may be.

It is not necessary that the rates complained of shall all be on the same line of railroad. In fact, the principal complaint which is now made in the country against the railroad rates is, not that they are too high, but that they are unjust to different localities. I venture to say that there is not a single locality in the United States of any importance served by rail which does not think that it has a just complaint because of discrimination in rates against it. The discrimination between localities is the burden of the present complaint. This is shown by some of the statements made by Mr. Bacon.

Mr. Bacon, in his circular letter, dated Milwaukee, December 19, 1904, says:

WHAT NOW REMAINS TO BE DONE.

It now remains to secure the passage of a measure which will provide for the prevention of unjust discrimination in published tariff rates between different sections and localities, and between different descriptions of traffic, from which, under the existing law, no practical means of relief is afforded, and will also afford protection to the public from the continuance of rates unreasonable in themselves.

Mr. Bacon, in his testimony before the House committee December 13, 1904 (p. 22 of Hearings), was asked the following question, and made the following answer:

The CHAIRMAN. What is, in your judgment, the serious evil properly to be complained of relating to railway charges?

Mr. BACON. Well, sir, I should say that there were two. First, there is the relation of rates between competing points, and the relation of rates between competing commodities, all of which are very important.

The CHAIRMAN. They are all in the nature of discriminations?

Mr. BACON. They are all in the nature of discriminations, but beyond that, and of far greater importance, is the general scale of rates throughout the country, * * *.

In his testimony before the House committee April 9, 1902, Mr. Bacon, referring to the same case of discrimination, said (p. 25):

The injustice Milwaukee suffers from is the disproportionate rate charged from points in the extreme West, where grain is produced largely, to Milwaukee as compared with Minneapolis. * * * Minneapolis gets the better rates, and we brought a case * * * before the Interstate Commerce Commission, and the Commission decided in our favor and declared that the rates to Milwaukee were, from certain territory, from 2 to 3 cents too high as compared with the rates existing at the same time from the same territory to Minneapolis. * * * The railroad companies declined to obey the order, * * * their simple defense was that they were unable to agree among themselves upon a less differential in rates than already existed. That injustice and that burden has been borne up to the present time, and will always have to be borne unless some change is made in this law. * * * Take shipping grain from the country I refer to to Milwaukee and Minneapolis. The rates to Milwaukee and Minneapolis have a certain difference one over the other. The rates to the seaboard from Milwaukee and Minneapolis, which is the final destination of most of the grain, have a certain difference. That difference should be equal in each case; that is, the rate on grain to Milwaukee and from Milwaukee to the seaboard should be equal to the rate on grain from the same point of origin to Minneapolis, added to the rate from Minneapolis to the seaboard.

Mr. Bacon made the following statement before the Senate committee (p. 22):

Mr. BACON. I am very much surprised to find that there is entertained very generally by the public that idea that individual discrimination is the great evil of the transportation business. But from my own observation—and I have made a study of the operation of the interstate-commerce act ever since its original enactment and have followed its workings very closely—my own observation is that that is comparatively a trivial evil. The great evil is the discrimination between localities—discrimination in the published rates—certain localities being discriminated against in favor of other localities.

* * * * * * *

Mr. BACON. The motive is not for the purpose of discriminating in favor of one locality as against another, but it arises from competition for business over a certain territory. Certain railroads taking business from a certain territory to a certain market are in competition with other roads taking the same kind of business to another market, and each of the roads is trying, of course, to get the advantage over the other in the division of the business. In consequence of that the rates become discriminative.

It is perfectly evident that the Interstate Commerce Commission can not regulate discriminations between localities for the future unless it can absolutely determine a number of rates in one order. If it can determine more than one, then it must determine as many as are complained of.

If this power of determining between competitive points the rates to and from these points shall be conferred upon the Interstate Commerce Commission, then all natural competition and rivalry between localities will be controlled by the arbitrary decision of the Commission. There is to-day intense rivalry between roads leading south and east from Nebraska, Iowa, Kansas, Missouri, and Illinois points for the export grain trade. The roads leading to Galveston and to New Orleans are determined to have a fair proportion of this trade, and the result has been the reduction of rates both by the southern roads and the eastern roads.

Shall the grain for export go by way of Galveston or New Orleans, or shall it go by way of New York and Newport News? The natural rivalry of the roads leading to these points would keep active competition for this grain trade, and probably in the end furnish reduced rates and better facilities. Each one of the seaports would stand upon its own footing. It would be a fair field for all.

But the very purpose of the proposed legislation is to enable and require the Interstate Commerce Commission to settle this rivalry and determine what the rates shall be. Not determine the maximum rates, mind you, but determine the absolute, actual rates and put them in force. The Commission will have to say what the rate per 100 pounds shall be on wheat, corn, and oats from Omaha, as well as other points in the territory involved, to Galveston and New Orleans, and at the same time say what the rates shall be from these same points, both to Chicago and to points along the Atlantic seaboard. If the Commission happens to make a happy guess it may do no one great injury, but if it is unfortunate enough to make a wrong guess it may ruin the export grain trade of New York or of Galveston or of any of the other points.

The roads leading South are now largely engaged in hauling lumber from the South to northern points. They will be able to haul that lumber cheaper if instead of taking their cars back empty they can carry grain back in them. But if the Interstate Commerce Commission shall happen to decide a grain rate which would require the grain to go East rather than to southern points, then the inevitable effect is to either raise or maintain existing high rates on lumber from the South to the North.

It must be remembered in connection with all discussions of this matter that so long as the Constitution of the United States remains as it is, it is not within the power of Congress or the Interstate Commerce Commision to make such reductions or changes in railroad rates as will practically confiscate the property of the railway companies or of any one of them. The railroads are guaranteed, under the Constitution, the equal protection of the law, and the Supreme Court has construed this to mean that while Congress may prescribe reasonable railroad rates, yet it can not prescribe rates which shall in effect take private property without compensation.

It is doubtless true that a very large portion of the capital stock of the railways of the country is what is known as "water." It is doubtless true that in the early days of railway construction it was not possible to find many who would loan money on railway bonds to be issued without receiving a bonus in the shape of stock. It is also doubtless true that little if any of this stock remains in the hands of the original owners. Probably the fairest test as to most of the railway companies would be to ascertain the value of the investment by the market value of the stock and bonds. But, however the result may be arrived at, it is certain that the courts will find some method of computation to declare invalid rates which may be fixed so low as to interfere with the fair earning power of the capital invested. This is not only a doctrine which has been frequently enunciated by the Supreme Court, but it is a righteous doctrine. The people of this country, while they are not willing to submit to being robbed by the railway companies, have no desire to become robbers themselves and to take away from the owners of the railway property that property which they do own.

SOME RAILWAY STATISTICS.

I have made a somewhat careful examination of the recent reports of the Interstate Commerce Commision in reference to railway properties, and I find that according to the recent report of the Interstate Commerce Commission, dated December 19, 1904, the following facts are shown as of the date of June 30, 1903:

| | |
|---|---|
| Par value of railway capital | $12,599,990,258 |
| Stock | 6,155,559,032 |
| Funded debt | 6,444,431,226 |
| Railway capital owned by railway companies | 2,318,391,953 |
| 43.94 per cent of the capital stock paid no dividends | 2,704,821,163 |
| Amount of dividends declared on stock | 196,728,176 |
| Which was equivalent to 5.7 per cent on the dividend-paying stock. | |
| 4.33 per cent of the funded debt paid no interest | 272,788,421 |
| The gross earnings for the year ending June 30, 1903 | 1,900,846,907 |
| Which were greater than the year before | 174,466,640 |
| Operating expenses for 1903 | 1,257,538,852 |
| Which were greater than the year before | 141,290,107 |
| The net earnings for 1903 | 643,308,055 |
| An increase over the year before of | 33,176,535 |
| The income from all sources for 1903 | 848,995,535 |
| Fixed charges, etc | 552,619,490 |
| Leaving net income | 296,376,045 |
| Dividends declared | 196,728,176 |
| Other payments from net income | 420,400 |
| Surplus from the operations of year ending June 30, 1903 | 99,227,469 |
| Surplus in 1902 | 94,855,088 |

The item of fixed charges above stated consists of the following subitems:

| | |
|---|---|
| Salaries, etc | $430,427 |
| Interest on funded debt | 283,953,124 |
| Interest on current liabilities | 9,060,645 |
| Rents paid for lease of roads | 112,230,384 |
| Taxes | 57,849,569 |
| Permanent improvements | 41,948,183 |
| Other deductions | 47,147,158 |
| The total par value of the railway capital was June 30, 1903 | 12,599,990,258 |
| Less the amount owned by the railway companies themselves | 2,318,391,953 |
| Leaving nominal investment by the public of | 10,281,598,305 |

On the total railway capital outstanding June 30, 1903, there was paid during that fiscal year as dividends or interest on funded debt the following:

| | |
|---|---|
| Dividends | $196,728,176 |
| Interest on funded debt | 283,953,124 |
| A total of | 480,681,300 |

But included in the foregoing figures are many duplications on account of the leasing of roads and ownership of stock, etc., and the actual amounts, exclusive of duplications arising on account of intercorporate payments, of interest and dividends paid is as below:

| | |
|---|---|
| Net interest on funded debt | $268,830,564 |
| Net dividends | 166,176,586 |
| The gross earnings for the year ending June 30, 1904, were | 1,966,633,821 |
| The operating expenses were | 1,332,382,948 |
| The net earnings from operation were | 634,250,873 |
| Which latter includes taxes amounting to nearly | 56,500,000 |

During the year ending November 30, 1904, there were filed with the Interstate Commerce Commission—

| | |
|---|---|
| Tariffs | 162,428 |
| Notices of concurrence in joint tariffs | 197,049 |

SOME THINGS WHICH ARE NOT SO.

One of the chief difficulties with which our committee has been confronted in considering this rate question has been the many things which have been told to us that are not so. One of these is the story that the power which is proposed by this bill to be conferred upon the Interstate Commerce Commission was exercised by that Commission for ten years, between 1887 and 1897, without objection and without question. There are two errors in this statement—first, the power proposed here to be conferred was never claimed or exercised by the Commission; second, the power which was claimed and was exercised by the Commission was disputed and questioned in the first important case where it was exercised. That was the Maximum Rate case, which was decided by the Supreme Court in 1897, after it had been pending for several years. The original petition in that case was filed before the Commission prior to 1892, within four years of the creation of the Commission; and immediately the power of the Commission to enter an order fixing rates was strenuously resisted.

In no important case did the Commission ever enter an order even fixing maximum rates which was not resisted on the ground that the Commission did not have the authority. But the Commission never claimed to exercise the power proposed in this and similar pending bills. The power proposed here is to give the Commission the power to fix an absolute rate, to determine the exact rate. The power which the Commission did assume to exercise for several years was to determine what should be the maximum rate when it decided that an existing rate was too high. The distinction between the authority to determine the maximum rate and the requirement to fix an absolute rate is one of the very greatest importance, and the statement frequently and constantly made that the Interstate Commerce Commission exercised for ten years the power which is proposed in this bill to confer upon it, is either made by those who are honestly ignorant of the facts or by those who are so biased that they can not make a fair statement of the facts.

Of course, the question whether such power was claimed or exercised by the Commission in the past has nothing to do with the merits of the proposition now pending, except that the amount of business which was brought before the Commission during those ten years under the power then claimed, but disputed, can be no criterion of the amount of business and the number of complaints which will be brought before the Commission when the power to absolutely fix rates is definitely and clearly conferred upon the Commission, with an invitation, practically, to all in the country who believe themselves or their localities to be oppressed by freight rates to file these petitions for redress.

Another of the persistent errors which has been stated to the committee is as to the raising of freight rates between 1899 and 1903.

Mr. Bacon, in his statement before our committee on Decem- committee is as to the raising of freight rates between 1899 had been in force in 1903 the amount of freight paid would have been $155,000,000 less than it actually was.

This statement of Mr. Bacon, while broadly and specifically made by him without limitation, was, in fact, based upon a report made by the Interstate Commerce Commission to the Senate under date of April 7, 1904, in response to a Senate resolution. But in that very report was the statement:

> From what has been stated it must appear that no accurate or even approximate estimate of the actual effect of specific changes in rates upon the revenues of the carriers can be made.

Mr. Bacon's statement, that there was an increase in the revenues of the railroads of $155,000,000 in 1903 by reason of the amount of advance in freight rates between 1899 and 1903, is based on the idea of the average revenue per ton per mile.

The year 1899 has the record of having the lowest average rate of freight per ton per mile of any year in our history. It was probably brought about very largely through the great amount of freight shipped by the Government in connection with the Spanish war and the Philippine insurrection, especially the freight which went over land-grant roads at low rates.

But a comparison of the average rate per ton per mile of one year with another is never any certain criterion of either an advance or decrease in rates. The quantity of goods moving at the different rates may vary to such a degree that the average rate per ton per mile might be decreasing or increasing, while the actual freight rates on the different commodities might be moving in the opposite direction. The handling of an enormous quantity of low-class freight at a very low rate has the tendency to decrease the average rate per ton per mile, while an increase in the quantity of high-class freight has a tendency to increase the average rate per ton per mile. The absolute falsity of the assumption made by Mr. Bacon is easily demonstrated. The average rate for the carrying of 1 ton a mile in 1899 was 0.724 of 1 cent. In 1903 the average mile ton rate was 0.763, or 0.039 of 1 cent higher in 1903 than in 1899. It is by multiplying this 0.039 by the total number of mile tons of freight that Mr. Bacon reaches his conclusion of $155,000,000 advance. But if the same theory be tried in another case it will work results directly opposite.

It is claimed by Mr. Bacon and others, and I think truthfully, that there has, on the whole, been possibly some advance in freight rates since 1896. In 1896, it will be remembered, the Interstate Commerce Commission claimed to have the power to fix maximum freight rates. It surely will not be contended that the roads have made a radical reduction in the freight rates generally throughout the country since the Supreme Court decided in 1897 that the Interstate Commerce Commission had no power to fix rates. But in 1896 the average rate per ton per mile was 0.806 of 1 cent, or 0.043 higher than in 1903; so upon the reasoning adopted by Mr. Bacon, if the freight collected in 1903 had been collected on the basis of the rates in force in 1896, there would have been collected something over $160,000,000 more than was in fact collected. The illustration shows the utter absurdity of Mr. Bacon's statement, which he doubtless took from statements made by others, and yet that statement has been made and reiterated throughout the land to show how rapidly the railroads were increasing their freight rates since the power of restraint was removed by the Supreme Court decision in the Maximum Rate case in 1897.

Probably a fairer way of comparing the freight rates of 1899 and 1903 would have been by comparing the percentage of net to gross earnings in those two years.

As reported by the Interstate Commerce Commission, the gross earnings of the railroads for the fiscal year of 1899 were $1,313,610,118. The net earnings (not net profit) were $456,641,119; so that the percentage of net to gross earnings in that year was 34.76 per cent.

In 1903 the gross earnings were $1,900,846,907, the net earnings were $643,308,055, and the percentage of net to gross earnings was 33.84 per cent. And for the fiscal year of 1904 the gross earnings are reported as $1,966,633,821, and the net earnings $634,250,873, making a percentage of net to gross earnings of 32.25 per cent.

It therefore appears that while the gross earnings, which practically means the gross freight charges collected, have largely increased between 1899 and 1904, the net earnings are less in proportion now than they were five years ago. This shows conclusively that there was either a reduction in the rate of freight or an increase in the cost of carriage. Probably there was no reduction on the average in the rate of freight, but it is quite certain that there has been a considerable increase in the cost of carriage.

The total number of railroad employees in 1899 was 928,924. In 1903 the number was 1,312,537, which is an increase nearly equal in percentage to the percentage of increase of freight and passenger earnings.

The amount which was paid to these employees in 1899 was $522,967,896. In 1903 the compensation was $775,321,415, making a percentage of increase in pay considerably greater than the percentage of increase in business.

It appears by the reports of the Interstate Commerce Commission that the average daily rate of pay on the railroads from 1899 to 1903 for various classes of employees is as follows: Engineers, from $3.72 to $4.01; firemen, from $2.10 to $2.28; conductors, from $3.13 to $3.38; other train men, from $1.94 to $2.17; machinists, from $2.29 to $2.50; section foremen, from $1.68 to $1.78; other trackmen, from $1.18 to $1.31; and other different classes of employees in equal proportion. And the report of the Commission states that "these figures are entirely trustworthy and show accurately the tendency of the wages received by the various classes of railway employees."

It is quite evident that the cost of operation of the railroads has very materially increased within the last few years. Not only has there been the increase in the wages of the employees, as indicated, but there has been an increase in the cost of steel rails, in locomotives, in cars, and in fact in all kinds of material used by the railways. The public now demands better terminal facilities than ever before. We demand better passenger trains. We demand more speedy freight trains. We insist in every direction upon increased facilities. We require the railroad companies to use additional safety appliances, and that demand will continue to increase.

We are disposed to require more in the way of service from the railway companies than they have heretofore performed. In the face of this demand for better facilities it does not seem probable to me that there will be at once any general reduction of freight rates, though no doubt the tendency in the years to come will be to reduce the cost of carriage by increasing the quantity which can be carried with the expenditure of a given power.

The net dividends paid in the fiscal year 1903 on the capital stock of all the railroads in the United States (excluding inter-corporate payments) was $166,176,586, as shown in the last annual report of the Interstate Commerce Commission. This was between 3 and 4 per cent on the total capital stock not owned by the railroads themselves. It is very evident that an effort to reduce railway rates generally throughout the country, so as to make the dividend which could be paid to the stockholders less than 4 per cent, would probably be considered as confiscatory or an effort to take the property of the owners without due compensation when the matter came before the Supreme Court of the United States for review.

But in fixing railway rates between two competing points served by different railways, it will not be possible to fix the rate as based upon the earning capacity of the more prosperous road or roads. Between Chicago and New York, for instance, there are a number of different competing lines. When the Interstate Commerce Commission is called upon to fix the rate from Chicago to New York it will not be able to take as the standard the line which is the most prosperous. If the rate is fixed so low that it will amount to the confiscation of the least prosperous of the roads, then, as to that road, it would be declared to be an unconstitutional rate. And it is perfectly evident that in fixing the rates between these points the Commission could not fix separate rates for each road.

THE BASIS OF FIXING RAILWAY RATES.

Railway rates have never been fixed on the basis of the cost of carriage, though that element is considered. They have never been fixed upon the basis of the value of the article, though that element is considered. They have never been fixed upon the basis of the distance, though that element is considered. No scientific basis has been discovered for the fixing of railway rates. No fixed and certain principles have ever been applied to the making of rates. It will cost the railway more to carry a carload of coal 500 miles than it will a carload of dry goods 200 miles. But if railway rates were fixed on the basis of this cost, then the price of coal at any considerable distance from the mines would be prohibitive.

I have not the time to enter into any exhaustive discussion of the different considerations which do affect the fixing of the rates, but I wish briefly to call attention to a few of these considerations:

The cost of carriage and the distance carried.

The value of the article.

The volume of the business.

The direction in which the article moves, and whether it will occupy cars which would otherwise be running empty, or whether it will require additional cars which will run empty on the return trip.

The competitive element or rate made necessary by competition in order that the road may get a share of the traffic, and especially so when such share of the traffic will fill cars which otherwise would make a trip running empty.

The bulk and weight of the article.

The degree of risk attending transportation, the railroad company being liable for loss or damage.

The special facilities required for the particular shipments or the particular articles.

The special equipment required, as for articles of a perishable nature or articles of extraordinary size or bulk.

The effect upon competitive communities.

The desire of each road to build up its terminal points so as to have cars filled both ways as far as possible with business naturally tributary to the road.

The competition between commodities, either where one road carries two commodities which compete with each other or where one road carries a commodity in competition with a different commodity carried by another road to the same competitive points.

The desire of each road to build up the communities and industries along its own lines.

It is not possible for anyone to determine accurately the cost of the carriage of any particular article, unless it might be some such article as coal on some of the coal roads where the bulk of the business is the coal trade. The actual cost of movement of a train from Chicago to New York might be closely approximated, but even then the wear and tear on the rails, the locomotives, and the cars could not be finely adjusted, and it is impossible to estimate what proportion of the cost of maintenance and of fixed charges should be charged against that particular train. And even if it could be ascertained what exact proportion of the whole cost of the operation and maintenance and fixed charges of the road for an entire year should be charged to that particular train, it would still be impossible to say what share of the cost of the train was consumed in the carriage of a box of dry goods, a package of millinery, or a crate of crockery.

Freight rates have been fixed by different roads in order to obtain a share of the business. Such a rate may have contributed nothing toward the payment of dividends or interest on bonded indebtedness or other fixed charges. It may not even have paid an equal proportion with other freight of the cost of maintenance of the road. But the fixed charges are a liability against the road in any event. The road must be maintained in any event, and if the railway officials can not otherwise get the traffic but by a reduction of its rates they obtain a proportion of the traffic at a rate which will pay something more than a proportionate share of the cost of operation and will contribute something toward maintenance, then it is to the interest of the road to put its rate down and secure a share of the traffic.

This process constantly obtains where the road desires freight to fill cars which would otherwise run empty in one direction.

I have made these few brief suggestions upon the basis of railway rate making to show the problem which confronted our committee in endeavoring to meet the public demand to correct the existing evils and, if possible, to prevent creating still greater evils than do now exist. Under all of the bills which are pending it is proposed to give to the Interstate Commerce Commission the responsibility, if called upon to exercise it by complaint, to determine all of these railway rates. When they are called upon to exercise that responsibility by proper complaint they can not avoid it. It will be their duty to proceed, but I fear that they will not have the capacity (though they may be the wisest of all men) to understand fully the conditions governing freight competition throughout all of the United States, and that even if they have the capacity, they will not have the time, unless we can lengthen a day into a thousand years.

EFFECT ON POLITICS.

One other difficulty has presented itself to me: Under the power which we propose to confer upon the Commission that Commission will be the most autocratic and powerful small body of men in the world. It can destroy communities. It can destroy shipping interests. It can destroy manufacturing industries. It can destroy seaboard points. It can destroy railways. I do not think it will do so. I do not believe there is any grave danger that it will be radical in its decisions. But the fear that it may do so will constantly be before the railways of the country. Will it not be the most natural result that the railways of the country will practically unite to affect the results of our national elections?

A radical President filled with hostility toward large accumulations of capital might appoint a radical Commission. Hence it will be to the interest of the railways to endeavor to so influence the political conditions that no radical President may be elected. Will not these considerations bring the railways into a united effort in politics? Not merely the railroad owners, but the railway employees. It is to the interest of the railway employees that rates be maintained at a reasonably high figure so that the companies can not only pay reasonably high wages, but may be forced to reduce the hours of labor and increase the safety appliances for the protection of the railway employees. I dread and fear the effect of any legislation which will cause a single powerful class of capitalists and employees to join, through selfish interests of apparent self-protection, to influence national politics without a sufficient regard for other great principles at stake. I hope and pray that in this respect my fears will prove groundless and my doubts will be dissipated by the events of the future.

RATES IN EFFECT AT ONCE.

This bill proposes, when the Commission shall fix a schedule of rates on complaint, to put those rates into effect in thirty days' time after notice of the order, and imposes a penalty of $5,000 a day upon the railroad if the order be not observed by the railroad.

Complaint has been made that this bill is not strong enough, is not radical enough, is not effective enough in putting the rates into effect. It seems to me, if anything, the bill is too radical. When the Commission makes an order fixing new rates the railroad must either put those rates into effect at once or run the risk of paying a penalty of $5,000 per day. It is not

within the power of Congress, the legislative body of the country, to require that the rates shall be actually put into effect, because the courts, the judicial branch of the Government, have the inherent right, which Congress can not take away from them, to prevent the road or the Commission from putting into effect a rate which will so reduce the income of the road that it amounts to a confiscation of the railway property, or a taking of that property by the Government without due compensation to the owners. We may write laws until the end of time on this subject, and they will have no effect to prevent the jurisdiction of the court, unless we change our form of government or our Constitution. If the Government can take the property of the stockholders of a railroad without compensation, then it can take the property of any private citizen without compensation. The courts retain the inherent authority, based upon the theory of our Government of the division of powers between the executive, the legislative, and the judicial branches of the Government, to restrain the putting into effect of a set of rates on a road which will amount to a practical taking of the property of the road without making due compensation to the owners.

In my judgment in this respect the bill goes as far as the power of Congress can extend, and it certainly goes so far that it gives absolutely no regard, from the legislative direction, to any vested interests of the railway stockholders. So far as the legislative power is concerned, the authority is conferred upon the Interstate Commerce Commission to confiscate railway property. We give in that direction practically all the power we have. But as our power is limited the railroads can enjoin, or any stock or bond holder of a railroad can enjoin, the putting into effect of rates fixed by the Commission, subject, however, to the possibility that if the injunction shall be finally dismissed the railroad will suffer a penalty at the rate of $5,000 per day for not putting the rates into effect. That penalty itself will, of course, amount to confiscation of the property to a certain extent in many cases.

DECISIONS OF THE COURTS.

I shall ask leave to append to these remarks a brief which I have prepared, covering a number of the more important decisions of the courts upon the subject of railway-rate legislation and rate making, for the benefit and information of those Members of the House who have not had occasion to give so much study to this subject as has been forced upon me by reason of being a member of the Commerce Committee.

CONCLUSION—PASS THE BILL.

In conclusion, permit me to say that the more I study the pending bill the more nearly I am pleased with it. It does not contain some of the essential safeguards for the shippers which were contained in the Hepburn bill. The provision in the Hepburn bill requiring the railroad when appealing to the court to give a bond to pay all shippers over its road the excess of freight collected from them by reason of the appeal to the court (if the appeal be not sustained) was a provision which would have automatically and without expense protected every shipper in the country where the Commission fixes rates over a road and that road chooses to appeal to the courts.

The provision in the Hepburn bill was the best provision, from the standpoint of the shippers, which has ever been in any bill presented. But through a density of perception, which I can not fully comprehend, the gentlemen who have set themselves up as the special leaders of this legislation seemed to almost unanimously oppose that provision. It is not in this bill. It ought to be. The gentlemen who have opposed it will come to the conclusion, upon more mature reflection, that they made a grave mistake when they insisted that that provision of the Hepburn bill should be eliminated.

Mr. Chairman, if we pass this bill—and I favor its passage—we are entering upon an unknown field of exploration. We are reversing the policy of active competition for trade between localities and between commodities. We are seeking to set aside the laws of nature which give to one locality natural advantages over another in commerce. But we are met with a peculiar condition of affairs. We know that certain evils now beset our shipping, manufacturing, and other industrial interests. We know that undue preference is given at times to commodities one over another; that undue preference is given at times to communities and localities one over another; we know that the railway companies have arbitrarily changed classifications in many instances in the last few years by which rates have been vastly increased; we know that there have been many general advances in freight rates in certain classes of traffic and over certain railway lines; we know that there has been a concentration of railway capital within the control of a few men who are not themselves experts in rate making; we know that for various speculative and other purposes the price of railway stocks has been forced up to an unparalleled degree, and that in order to pay dividends upon these fancy prices of stocks freight is compelled, in many cases, to pay an unreasonably high tribute.

We are compelled by the force of circumstances and conditions and for the protection of the business interests of the country to enact some legislation upon this subject. It may not be the wisest legislation. It undoubtedly enters upon a field hitherto unexplored. But, sir, I have confidence in the justness and fairness of the American people. No one desires to unduly injure the railway interests. It would not be possible for us to inhabit this continent of ours with comfort without the progressive aid of railways. We need the best railroads in the world. We demand the best transportation in the world. Our country is so great that we must have the best transportation in the world, and yet have it at the lowest cost of transportation in the world. If the legislation which we now enact threatens at any time to become burdensome to the railroads, or if, as seems to me more likely, it becomes burdensome to the shippers themselves, then Congress will still be in session in the years to come and can correct the evils which then are apparent. We can not fix legislation now for all time. We can not settle these grave and complex problems of the land. We can only endeavor to correct the evils which we can see, leaving to future legislators the correction of those evils which we may fear will grow out of our legislation, if they do in fact appear.

The Committee on Interstate and Foreign Commerce of this House, under the leadership of one of the three or four greatest of its Members, Col. WILLIAM P. HEPBURN, of Iowa, has given this subject as careful study and exhaustive examination as has ever been given to any subject by any committee of this or any other body.

We have presented the bill now pending with fear and trembling, but we have presented it as the consensus of opinion on the Republican side of our committee. The bill is called by the name of one of its distinguished members, but the bill presented is no one man's or two men's bill. It is the result of the work of the committee, a work in which every member of the committee has taken active part.

In the main this bill is the product of the genius and study and energy and patience of its chairman, Mr. HEPBURN. When I first came to Congress Mr. HEPBURN was declared to be opposed to an isthmian canal because he was under the influence of railroads, as it was said. And yet it was to his genius and his skill in drafting the first bill for a Government-owned canal that we owe the fact that we are now engaged in the construction of the Panama Canal. It has been charged in this connection that Mr. HEPBURN was under the influence of certain railway interests. To those who know him and who appreciate his honesty of purpose, his purity of mind, his earnestness of intent, that charge only caused smiles at the foolishness of the author. Without his aid at this time I do not believe our committee could have arrived at any result which could have commanded a majority of the committee.

We owe the production of the pending measure to the courageous attitude of President Roosevelt and to the patient, untiring search and brilliant genius of Colonel HEPBURN. [Loud applause.]

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APPENDIX.

BRIEF OF DECISIONS ON RAILWAY-RATE MAKING.

Attention is called to the development of the law as shown in these cases. In Munn *v.* Illinois, Peik *v.* Chicago Railroad Company, and Dow *v.* Beidelman the court did no more than to affirm the right of the legislative and administrative branches of the State governments to fix rates and charges. Statements in these cases with reference to the jurisdiction of the courts have been modified by subsequent decisions. The right of the courts to inquire into and decide as to the rates fixed was first announced in the Railroad Commission cases, was affirmed in Chicago Railroad *v.* Minnesota, Chicago Railroad *v.* Wellman, and was argued at length and fully considered in Regan *v.* Farmers' Loan and Trust Company. The doctrine announced in this latter case has been cited with approval and followed in all subsequent cases. The extracts in point from the cases above referred to follow:

In the case of Munn *v.* Illinois (94 U. S., 113, 133) (1876) it was claimed that "the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and what is reasonable is a judicial and not a legislative question." In disposing of this contention, the court said:

"As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum, beyond which any charge made would be unreasonable. Undoubtedly in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of

charge as one of the means of regulation is implied. In fact, the common-law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will and compel the public to yield to his terms or forego the use. * * *

"We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts."

In Peik *v.* Chicago, etc., R. R. Co. (94 U. S., 164, 178) (1876) the court said:

"As to the claim that the courts must decide what is reasonable and not the legislature, this is not new to this case. It has been fully considered in Munn *v.* Illinois. Where property has been clothed with a public interest, the legislature may fix a limit to that which in law shall be reasonable for its use. This limit binds the courts as well as the people. If it has been improperly fixed, the legislature, not the courts, must be appealed to for the change."

This doctrine is reaffirmed in Dow *v.* Beidelman (125 U. S., 680, 687) (1887).

In the Railroad Commission cases (116 U. S., 307, 331) (1885) the court refers with approval to the doctrine announced in Munn *v.* Illinois, but announces this limitation:

"From what has thus been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights the State can not require a railroad corporation to carry persons or property without reward; neither can it do that which in law amounts to a taking of private property for public use without just compensation or without due process of law."

In the case of Chicago, etc., R. R. Co. *v.* Minnesota (134 U. S., 418, 458) (1889) the court went a step farther and said:

"The question of the reasonableness of a rate of charge for transportation by a railroad company, involving as it does the element of reasonableness both as regards the company and as regards the public, is eminently a question for judicial investigation, requiring due process of law for its determination. If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States; and in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws."

In this case Mr. Justice Miller, in a concurring opinion, held that in cases where a tariff of rates for transportation was so unreasonable as to practically destroy the value of property of persons engaged in the carrying business on the one hand, or so exorbitant and extravagant as to be in utter disregard of the rights of the public on the other, there is an ultimate remedy by the parties aggrieved in the courts for relief against such oppressive legislation; but that until the judiciary has been appealed to the tariff of rates so fixed is the law of the land.

In the case of Chicago, etc., R. R. Co. *v.* Wellman (143 U. S., 339, 344) (1891) the position of the court is stated in these words:

"The legislature has power to fix rates, and the extent of judicial interference is protection against unreasonable rates."

In the case of Reagan *v.* Farmers' Loan and Trust Co. (154 U. S., 362, 396) (1893) the question was squarely presented and argued at great length. The body of rates as fixed by the railroad commission of the State of Texas was challenged by the plaintiff as unreasonable, unjust, and working a destruction of its right of property. The defendant denied the power of the court to enter into an inquiry in the matter, and insisted that the fixing of rates for carriage by the public carrier was a matter wholly within the power of the legislative branch of the Government and beyond examination by the courts. The court in this case calls attention to the fact that previous cases did no more than to decide as to the right of a State within which a railroad company did business to regulate or limit the amount of its charges. Attention is also directed to the fact that previous cases all support the proposition that while it is not the province of the courts to enter upon the merely administrative duty of framing the tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owner of property invested in the business of transportation that equal protection which is the constitutional right of all the owners of other property. The position of the court is summed up in these words:

"It is doubtless true, as a general proposition, that the formation of a tariff of charges for the transportation by a common carrier of persons or property is a legislative or administrative rather than a judicial function. Yet it has always been recognized that, if a carrier attempted to charge a shipper an unreasonable sum, the courts had jurisdiction to inquire into that matter and to award to the shipper any amount exacted from him in excess of a reasonable rate; and also in a reverse case to render judgment in favor of the carrier for the amount found to be a reasonable charge. The province of the courts is not changed, nor the limit of judicial inquiry altered, because the legislature instead of the carrier prescribes the rates. The courts are not authorized to revise or change the body of rates imposed by a legislature or commission; they do not determine whether one rate is preferable to another, or what under all circumstances would be fair and reasonable as between the carriers and the shippers; they do not engage in any mere administrative work; but still there can be no doubt of their power and duty to inquire whether a body of rates prescribed by a legislature or a commission is unjust and unreasonable, and such as to work a practical destruction in rights of property, and, if found so to be, to restrain its operation."

The doctrine announced in the Reagan case has been followed in a number of subsequent cases, which hold as follows:

"This court has declared in several cases that there is a remedy in the courts for relief against legislation establishing a tariff of rates which is so unreasonable as to practically destroy the value of property of companies engaged in the carrying business, and that especially may the courts of the United States treat such a question as a judicial one, and hold such acts of legislation to be in conflict with the Constitution of the United States, as depriving the companies of their property without due process of law, and as depriving them of the equal protection of the laws."

St. L. and San Francisco Rwy. *v.* Gill, 156 U. S., 649, 657 (1894);
Smyth *v.* Ames, 169 U. S., 466, 522–523 (1897);
Lake Shore Rwy. Co. *v.* Smith, 173 U. S., 684, 687 (1898);
Chicago, Milwaukee, etc., Rwy. *v.* Tompkins, 176 U. S., 167, 172–173 (1899);
Covington Turnpike Co. *v.* Sandford, 164 U. S., 578, 592 (1896).

The State courts announce practically the same doctrine.

C. and N. W. R. R. *v.* Dey, 1 L. R. A., 744, 752 (1888);
P. and A. R. R. Co. *v.* Florida, 3 L. R. A., 661 (1889).

In the case of Burlington, Cedar Rapids and N. R. R. Co. *v.* Dey (12 L. R. A., 436, 444) (1891), the supreme court of Iowa said:

"The courts of law and chancery are open to the railroad corporations for proceedings to review the acts of the commissioners in fixing rates of charges."

In a case involving the interstate-commerce act the Supreme Court of the United States said:

"It is one thing to inquire whether the rates which have been charged and collected are reasonable—that is a judicial act; but an entirely different thing to prescribe rates which shall be charged in the future—that is a legislative act." (Maximum rate case I. C. C. *v.* Rwy. Co., 167 U. S., 479, 499 (1897).)

Questions involving the powers of the legislative and executive, and the jurisdiction of the judicial branch of the State government of Kansas arose and were ably considered by the Kansas supreme court in the case of State *v.* Goddard (49 L. R. A., 662, 1900).

That case involved the constitutionality of an act of the State legislature creating a court of visitation with power to fix rates and enforce the observance thereof, and the court in holding the act unconstitutional, among other things, said:

"To declare what the law is or was belongs to the judiciary, but to declare what it shall be in the future belongs to the legislature" (p. 666).

"The regulation of such charges is held to be distinctively a legislative function, which may be delegated by the legislature to a subordinate legislative or administrative body, but if this subordinate body or the legislature exceeds its powers and a person is thereby injured in his rights of property he may invoke the judicial power to determine that question of legal injury; and the reasonableness of the charges, although a question legislative in its nature, must be reviewed by the court as necessarily incident to the exercise of its judicial power. But if the court should attempt to establish for the future a schedule of charges it would exceed the limits of judicial power; it would act as legislator in respect to a matter as to which it must also act as judge" (p. 668).

"We start, then, in considering the boundaries of judicial and legislative power under our Constitution and system of Government from a fixed monument to determine whether the legislative power to make rates may be conferred upon the judicial tribunal known as the 'court of visitation.' The rate-making power, being essentially legislative in its nature, whether exercised directly by the legislature or delegated by it to a competent board or commission, can no more be imposed on or exercised by the judicial department than can the pardoning power of the governor, or any other distinctively executive function. It is a cardinal principle of representative government that the making of laws and rules regulating the future conduct and fixing the rights of parties belongs to the legislative department—a power which can never be reposed in or exercised by the judiciary" (p. 668).

"It is one thing to determine whether a freight rate is reasonable, in a controversy between a shipper and a carrier, and another thing to decide, at the suit of the State or a private party, what shall be charged in the future for such services" (p. 671).

The constitutionality of this act was also under consideration in the case of Western Union Telegraph Company *v.* Myatt (98 F. R., 335).

In the case of C., B. and Q. R. R. Co. *v.* Jones (24 L. R. A., 141) (149 Illinois, 361), an act which provided that "if any railroad corporation * * * shall charge * * * more than a fair and reasonable rate * * * " was attacked on the ground that it was void for uncertainty in not defining the offenses for which penalties provided for were imposed. The court said:

"The first section of the statute is merely declaratory of a well-known principle of the common law. At common law the common carrier was obliged to receive and carry all goods offered for transportation upon receiving a reasonable hire (Messenger *v.* Pennsylvania R. Co., 36 N. J. L., 407, 13 Am. Rep., 457; New England Exp. Co. *v.* Maine Cent. R. Co., 57 Me., 188, 2 Am. Rep., 31); and the court was to judge of the reasonableness of the freight charges. (Gard *v.* Callard, 6 Maule and S., 70; Lowden *v.* Hierons, 2 Moore, 102; Baxendale *v.* Great Western R. Co., 5 C. B. N. S., 330.) As common carriers must carry all freight offered to them and can only make a reasonable charge for so doing, it follows that the statute is only an expression of what was the law without the statute. Undoubtedly the legislature has the power to declare what is a reasonable compensation, or to fix the reasonable maximum rates of charges. (Dow *v.* Beidelman, 125 U. S., 680, 31 L. ed., 841.) But in the absence of statutory regulation upon the subject the courts must decide what is reasonable. (Dow *v.* Beidelman, supra; Munn *v.* Illinois, 94 U. S., 113, 24 L. ed., 77; Chicago, B. and Q. R. Co. *v.* Iowa, 99 U. S., 155, 24 L. ed., 94; Budd *v.* New York, 143 U. S., 517, 36 L. ed., 247, 4 Inters. Com. Rep., 45.) This being so, we are unable to see how the statute here deprives the appellant of its property without due process of law. If the legislature has failed to fix a reasonable rate, then the courts must decide for the railroad companies, when controversies arise, what is a reasonable rate. (Chicago, B. and Q. R. Co. *v.* Iowa, supra.) (P. 143.)

"We understand the doctrine of C., M. and St. P. Rwy. Co. *v.* Minnesota, supra, and of Budd *v.* New York, supra, to be as follows: The legislature has the power to directly fix the rates of charges. It has the right to declare what is reasonable. When it does so, its declaration is conclusive as to the reasonableness of the rates, and a charge beyond the maximum fixed by it must be regarded as unreasonable. But where the legislature creates a commission to regulate the rates of charges, such commission has no power to make a schedule of rates which shall be final and conclusive evidence as to the reasonableness of the charges, because judicial inquiry is thereby cut off. We do not, however, understand the Federal cases to hold that an act of a State legislature may not be valid, if, while omitting to itself fix the maximum rates, it creates a commission with authority to make schedules which shall be prima facie evidence of the reasonableness of the rates. Where the schedule is only made prima facie evidence, the court, in a suit against the carrier, can inquire and determine what is a reasonable rate; and the defect which was found to exist in the Minnesota law is thus obviated (p. 146).

"When a board is authorized to make a schedule of rates, and their schedule is merely given the force and effect of prima facie evidence as to the reasonableness of the rates in a suit involving the question of such reasonableness, there is no delegation to the board of the legislative power to establish rates. The legislature thereby merely refrains from the exercise of its constitutional power, and, by leaving

the question as to the reasonableness of the rates open, makes room for the exercise by the courts of their jurisdiction upon the subject. The final tribunal of arbitrament is not the judiciary, but the legislature. But 'when the legislature declares that the charges shall be reasonable, or, which is the same thing, allows the common-law rule to that effect to prevail, and leaves the matter there, then resort may be had to the courts to inquire judicially whether the charges are reasonable.'" (C., M. and St. P. Rwy. Co. *v.* Minnesota, 134 U. S., 462, 33 L. ed., 983.)

From the foregoing decisions I conclude as follows:

The power to fix and determine, as a rule for future observance, rates and charges for the transportation of persons and property by common carriers belongs exclusively to the legislative or administrative branch of the Government. The legislature may, in the first instance, prescribe such regulations and fix definitely the tariff of rates and charges; or it may lawfully delegate the exercise of such powers to some administrative board or body of its own creation. Where the legislative enactment is silent as to the right of appeal to the courts they may interfere only when the rates established are confiscatory, and a statute attempting to deny to them the right to interfere in such cases would be void, at least as to that portion thereof. Where the rates established by legislative enactment are other than confiscatory the courts are without power to interfere unless authority so to do is expressly conferred on them by law. But the legislative branch of the Government may undoubtedly authorize them to inquire into and decide as to the reasonableness of all rates so fixed if it sees fit.

So far as the courts are concerned they are without power to establish a schedule of rates and charges for future observance, and the legislative branch of the Government can not lawfully grant to them such power or impose on them the duty of fixing rates and charges in the first instance. It must not be inferred from this, however, that the courts are wholly without jurisdiction in the premises. They may clearly interfere under the following conditions:

First. Where the legislative branch of the Government has failed to exercise its right to regulate rates by appropriate statutes, the courts have jurisdiction to determine as to the reasonableness of rates already charged, as at common law.

Second. Where the legislative branch of the Government has exercised its right to regulate rates by statutes, which are silent as to what, if any, action the courts may take, the courts may interfere where such rates are confiscatory but may not pass on the reasonableness or unreasonableness of rates which are other than confiscatory.

Third. Where the legislative branch of the Government has exercised its right to regulate rates by means of appropriate legislation, which expressly confers on the courts jurisdiction, and authorizes them to inquire and determine as to the reasonableness or unreasonableness of all rates so fixed, the courts may clearly exercise that power, providing, of course, the question is so presented that the judicial power is capable of acting on it.

Congress has the undoubted right to provide a means whereby the laws which it enacts may be executed and enforced. The case of Interstate Commerce Commission *v.* Brimson (154 U. S., 447, 1893) is conclusive on this point. The line of reasoning and principles announced in that case are, in effect, as follows:

The Constitution extends the judicial power of the United States to all cases in law and equity arising under that instrument or under the laws of the United States and to all controversies to which the United States shall be a party. (Art. 3, sec. 2.) The circuit courts of the United States are capable, under the statutes defining and regulating their jurisdiction, of exerting such power in cases or controversies of that character within the limits prescribed by Congress. (25 Stat., 434, ch. 866.) The fundamental inquiry in a case of the kind would be as to whether the proceeding was a "case" or "controversy" within the meaning of the Constitution (pp. 468, 469).

"What is a case or controversy to which, under the Constitution, the judicial power of the United States extends? Referring to the clause of that instrument which extends the judicial power of the United States to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made or that shall be made under their authority, this court, speaking by Chief Justice Marshall, has said:

"'This clause enables the judicial Department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States.' (Osborn *v.* Bank of the United States, 9 Wheat., 738, 819.) And in Murray *v.* Hoboken Co. (18 How., 272, 284) Mr. Justice Curtis, after observing that Congress can not withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law or in equity or admiralty, nor, on the other hand, bring under judicial power a matter which, from its nature, is not a subject for judicial determination, said: 'At the same time there are matters involving public rights which may be presented in such form that the judicial power is capable of acting on them and which are susceptible of judicial determination, but which Congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper.' So, in Smith *v.* Adams (130 U. S., 173), Mr. Justice Field, speaking for the court, said that the terms 'cases' and 'controversies' in the Constitution embraced 'the claims or contentions of litigants brought before the courts for adjudication by regular proceedings established for the protection or enforcement of rights or the prevention, redress, or punishment of wrongs.'"

An attempt on the part of the Interstate Commerce Commission to enforce a rate which it had prescribed and a denial on the part of a carrier as to the right of the Commission to make such a rate or enforce it would be a dispute involving rights or claims asserted by the respective parties to it.

"And the power to determine it directly and, as between the parties, finally, must reside somewhere. It can not be that the General Government, with all the power conferred upon it by the people of the United States, is helpless in such an emergency and is unable to provide some method, judicial in form and direct in its operation, for the prompt and conclusive determination of this dispute.

"As the circuit court is competent under the law by which it was ordained and established to take jurisdiction of the parties, and as a case arises under the Constitution or laws of the United States when its decision depends upon either, why is not this proceeding judicial in form and instituted for the determination of distinct issues between the parties, as defined by formal pleadings, a case or controversy for judicial cognizance within the meaning of the Constitution? It must be so regarded unless, as is contended, Congress is without power to provide any method for enforcing the statute or compelling obedience to the lawful orders of the Commission, except through criminal prosecutions or by civil actions to recover penalties imposed for noncompliance with such orders. But no limitation of that kind upon the power of Congress to regulate commerce among the States is justified either by the letter or the spirit of the Constitution. Any such rule of constitutional interpretation, if applied to all the grants of power made to Congress, would defeat the principal objects for which the Constitution was ordained. As the issues are so presented that the judicial power is capable of acting on them finally as between the parties before the court, we can not adjudge that the mode prescribed for enforcing the lawful orders of the Interstate Commerce Commission is not calculated to attain the object for which Congress was given power to regulate interstate commerce. It can not be so declared unless the incompatibility between the Constitution and the act of Congress is clear and strong. (Fletcher *v.* Peck, 6 Cranch, 87, 128.) In accomplishing the objects of a power granted to it Congress may employ any one or all the modes that are appropriate to the end in view, taking care only that no mode employed is inconsistent with the limitations of the Constitution."

CONCLUSION.

Applying the principles announced by the courts in the cases above referred to, it is manifest that Congress may lawfully authorize the Federal courts to inquire into and decide as to the reasonableness or unreasonableness of all rates fixed by the Interstate Commerce Commission.

TABLE OF CASES CITED IN THIS MEMORANDUM.

C. and N. W. R. R. *v.* Dey, 1 L. R. A., 744 (1888).
C., B. and Q. R. R. *v.* Jones, 24 L. R. A., 141 (1894).
Chicago and M. Rwy. Co. *v.* Tompkins, 176 U. S., 167 (1899).
Chicago, etc., R. R. Co. *v.* Minnesota, 134 U. S., 413 (1889).
Chicago, etc., R. R. Co. *v.* Wellman, 143 U. S., 339 (1891).
Covington Turnpike Co. *v.* Sandford, 164 U. S., 578 (1896).
Dow *v.* Beidelman, 125 U. S., 680 (1887).
I. C. C. *v.* Brimson, 154 U. S., 447 (1893).
I. C. C. *v.* Railway Co., 167 U. S., 479 (1896).
L. S. Rwy. Co. *v.* Smith, 173 U. S., 684 (1898).
Munn *v.* Illinois, 94 U. S., 113 (1876).
P. and A. R. R. Co. *v.* Florida, 3. L. R. A., 661 (1889).
Peik *v.* Chicago, etc., R. R. Co., 94 U. S., 164 (1876).
Railroad Commission Cases, 116 U. S., 307 (1885).
Reagan *v.* Farmers' Loan and Trust Co., 154 U. S., 362 (1893).
Smyth *v.* Ames, 169 U. S., 466 (1897).
St. L. and S. F. Rwy. Co. *v.* Gill, 156 U. S., 649 (1894).
State *v.* Goddard, 49 L. R. A., 662 (1900).
W. U. Tel. Co. *v.* Myatt, 98 F. R., 335 (1899).

Mr. LAMAR of Florida. Mr. Chairman, I listened to the speech of the distinguished gentleman from Massachusetts [Mr. MCCALL] with a great deal of pleasure and with much surprise. His views reflected the views of the most complete reactionaries in this body and in this Government against Government regulation of railways. Mr. Chairman, it is very easy to see the trend and bent of that gentleman's mind. He scarcely speaks with any more than veiled contempt of what he might term the views of the people. That has been the way of the world from the beginning. I do not mean to say that that gentleman's sympathies are not with the masses of the people, but I do say that he has voiced on the floor of this House the same sentiment of distrust that Alexander Hamilton had of the popular will. It is the same feeling, Mr. Chairman, that every class, associated by ties of powerful, wealthy, proscriptive, and selfish interests, entertain of popular protest against class domination. He is lawyer enough, and good lawyer enough, to know that this Government has conferred upon this Congress power to legislate upon this question. He must know that the Supreme Court of the United States has passed upon this question so often that the schoolboys of the land are familiar with its decisions. Congress has the ample right to fix the rates of every railroad in the United States, to make every tariff sheet of railway rates in the United States, passenger and freight, if it desired to sit from January to December and exercise that power, and that it is only because of convenience that it delegates that power to an intermediate body called the Interstate Commerce Commission.

Mr. Chairman, that is true. Is it to be conceived that a great Government like this would lodge that great power in this body, and then that such power should be contrary to the first principles of right? Why, sir, that position is preposterous, and the gentleman is driven in his argument against this governmental regulation of railways to the preposterous charge that the people do not know what they want and are not competent to form their own opinions. I say that the masses of the people, every Member in this House that travels on the railways and pays the railway fare, every person that ships a pound of goods or a pound of beef or a bushel of grain, knows as much about this question as does the gentleman from Massachusetts, certainly as much as I do, and the common comprehension of the masses of the people as to the burdens they bear is one of the best standards in this country as to what is right or wrong.

It is a piece of assumption for any man, no matter how learned or distinguished he may be, to assume for a moment that his constituents are not wiser than he. Something has been said about the bill of the gentleman from Iowa, that his bill sought to cut down the Interstate Commerce Commission. Why did not the Republicans of this House maintain that feature? Because they knew well that if they brought that bill in here cutting down the Interstate Commerce Commission the common judgment of this land would understand that it

was a vindictive and proscriptive thrust at a body of men who for fifteen or twenty years have been patriotically doing their duty, and the Republicans of this body could not father that measure and they left it out of their bill. That is the reason it was left out. Mr. Chairman, the gentleman from Pennsylvania [Mr. SIBLEY] wants time. Why, of course. Whenever a pressing reform is demanded in Congress, then the special interests always clamor for time. It is a far cry from W. J. Bryan to President Roosevelt.

It is a long stride from the unlimited free coinage of silver to the gold standard, but that is the leap that the honorable gentleman from Pennsylvania has taken within the last eight years, and yet William J. Bryan lately has declared that Government ownership of railroads offers to his mind at this very moment apparently the most practical solution of these outrageous railway abuses, and the very fact that the American Congress to-day hesitates to effectually legislate upon the question is confirmatory proof of the value of Mr. Bryan's opinion. The question of governmental ownership is not before this Congress. It is not determined. In my opinion it is an academic question so far; but I say the mere fact that when this country is rocked from one end to the other upon these outrageous abuses and the American Congress hesitates, it is a direct confirmation, or at least a proof, as Mr. Bryan states, that this country demands relief, and if it can not be through governmental regulations it will take it through governmental ownership. But governmental regulation is easy to effectuate. What are these railways, Mr. Chairman? How about their owners? Every railroad that they own belongs to them by virtue of this Government through either a charter from this Congress or of the various State legislatures, and this Government that permits them to run can strike them down, and under the power of eminent domain they could be made subject to the use of the American people. They do not hold these great instrumentalities of commerce by any power of their own. I do not concede an assumption like the one advanced by some business man in Pennsylvania, who said that he held these vested properties by divine right, and another, almost a billionaire, who has made his money out of preferential rates given to the Standard Oil Company by the railroads of America, who declares that the trusts of this country grow like the American Beauty rose, the magnificent bloom of which is made by plucking off all of the smaller ones. Why, of course, there is only one almost billionaire, and that is Mr. Rockefeller. Mr. Chairman, it comes home to this Congress again, Shall we regulate these railroad abuses? Now, sir, we have two measures here to do it. One is the Esch-Townsend bill, which is good as far as it goes, but does not go far enough. The other bill, the Democratic minority substitute, the Davey bill, is good as far as it goes, but it does not go far enough. I do not know which I object to most, the insufficient Davey bill or the "misefficiency," if I may use the term, of the Townsend-Esch bill.

Now, Mr. Chairman, there is one bill not before this House; I wish it were. I believe if that bill were here, and this question could be stripped of anything like Democrats or Republicans, if we could do away with any fear of any partisan opportunity, and this question could be threshed out to the last analysis, and this Congress determine to give every practical remedy for these practical railroad abuses, the bill introduced into this House which has been pending before the Committee on Interstate Commerce for nearly one year, reported favorably to this body, so far as we can get it before this body, by Mr. SHACKLEFORD and myself, introduced by the distinguished gentleman from New York [Mr. HEARST]—if that bill could be fairly debated and fairly voted upon, without caucus dictation or caucus suggestion, it would receive the support of four-fifths of the membership of this House. [Applause.]

It is the only complete practical remedy for everyday practical railway abuses that is now pending before this Congress.

Now, Mr. Chairman, this railway question is not so difficult of ascertainment. The railroads would have you believe it, of course, because everything in life that is mysterious acquires a certain amount of power and a certain amount of imposition. Nearly every railroad traffic manager who has testified in past years admits, and the common sense of this House knows it, that they have no scientific basis for making rates. The whole struggle with them is to make the traffic of the country bear as much as it will bear without crushing it, without killing their own trade, and the balance of it lies in a hostile clash between traffic managements for the business of the country. And out of those two things grow these outrageous abuses.

Now, sir, what shall this law be? It should be a practical remedy for every-day practical railway abuses. In the first place this Esch-Townsend bill provides for substituting a reasonable rate in lieu of an unreasonable rate. So does the Davey bill; so does the Hearst bill. The Esch-Townsend bill creates a special court; so does the Hearst bill; the Davey bill does not. The Davey bill cuts off anything like trying the case upon any other record than that made by the Commission. So does the Hearst bill, and the Esch-Townsend bill does not. Now, I say, Mr. Chairman, that there are two cardinal features in this remedial legislation, to give first the legislative power to revise and fix reasonable rates to the Interstate Commerce Commission, and then there should be an expeditious remedy for trying these cases. The present remedy in trying these Commission cases amounts to a denial of justice. What good does it do a shipper, or a producer, or a consumer who is imposed upon to have a remedy if he is worn out by interminable appeals to the Supreme Court of the United States? There should be a finality of litigation.

The Hearst bill provides for an appeal from the Interstate Commerce Commission to the interstate commerce court, and I say that when that court shall determine against a railroad as to a reasonable rate that should be an end of it. Why? Because the Supreme Court of the United States vests the rate-making power to be vested in the Interstate Commerce Commissioners with so much sanctity that they will not overthrow those rates so made by them except as they are clearly unreasonable and clearly unjust. The courts will pay that deference to a rule or order made by the Interstate Commerce Commission that the judicial branch of this Government would pay to that same order or rate made by this House of Congress. That is the first rule of construction. Therefore, when the Hearst bill allows this appeal from the order of the Interstate Commerce Commission to the interstate commerce court, and that court, upon a careful hearing and finding, affirms the judgment of the Commission as to the reasonableness of a rate or rates, that should be a finality of litigation upon that point.

But the Hearst bill goes further, and says that if a constitutional principle is involved, then the interstate commerce court can allow the appeal, or if it does not, the Supreme Court of the United States can issue a writ of certiorari and bring that case up for determination. And that is proper. But this double appeal allowed by the Esch-Townsend bill, Mr. Chairman, upon the reasonableness of a rate is like "making a promise to the ear and breaking it to the hope," promising the litigant a right and denying him a remedy until he is worn to a frazzle. It makes no difference if that expense is put upon the Government, and the Attorney-General or the district attorneys are permitted to carry it on. Still there is interminable delay under the burdensome machinery that now bears down all litigation in this country, and that is one of the vices of the Esch-Townsend bill.

Now, Mr. Chairman, the Republican President has gone further than the Democrats of this body in his recommendations, and I am sorry to say so. The Republican President has gone further than the Republicans of this body, and I am glad to see it. I am always delighted to see a Republican President ahead of his party.

Mr. JAMES. Will the gentleman allow me to ask him a question?

Mr. LAMAR of Florida. Certainly.

Mr. JAMES. Has the Republican President gone any further than the Democratic platform of 1896, 1900, and 1904?

Mr. LAMAR of Florida. No, sir; he has not gone as far.

Mr. JAMES. Is he not following the lead of the Democratic party in advocacy of this rate proposition?

Mr. LAMAR of Florida. He is doing his level best to do it. [Laughter and applause.] Mr. Chairman, that has been in the Democratic platform and was urged by Mr. Bryan eight years ago, and has been in the platforms of 1896 and of 1900 and of 1904, and I defy the most expert Republican upon that side to point to a line in his national platform upon this question.

Mr. GAINES of Tennessee. And we have demanded it in Congress, too.

Mr. LAMAR of Florida. Certainly. I defy them to point to a line that they have voted for the correction of these abuses. But, sir, with all the difference of opinion I have with the President on some subjects—and there is an inseparable gulf that separates us as to some questions—I fully accord him great praise for having done what he has, and I welcome him to the doctrines of the Democracy, and say that this House as at present constituted would be sitting here without action for many years to come if he had not thrown this railway-rate question, like a bombshell, into the halls of Congress. I will give him that credit.

Mr. GAINES of Tennessee. McKinley did not do it.

Mr. LAMAR of Florida. Now, Mr. Chairman, why did not the Republicans of this House go as far as their own President? The President laid down in his message that these private-car lines were an outrageous, gross tax upon the industries of the people and ought to be corrected. He said that these terminal-

track and side-track systems should be legislated out of existence. This Republican bill has not got a word to say about it, nor has the Davey bill. The Hearst bill covers both of these points absolutely, but to prevent all shadow of doubt, Mr. SHACKLEFORD and myself took the liberty of adding two amendments expressly in terms covering these two identical iniquities and providing for their suppression. Now, why did not the Esch-Townsend bill include this? I will tell you. Mr. Chairman, the gentleman from Michigan [Mr. TOWNSEND] said upon the floor of this House that the Esch-Townsend bill was a compromise. So it is. You can not keep corporate influence out of any political party—Republican, Democratic, Prohibitionist, Populist—if you organize them from now until the day of judgment. It may be in one party more than another, but it will insert itself into every political party some. But when he said that, Mr. Chairman, I firmly believe—I charge no bad faith upon the gentleman or upon his side of the Chamber—that this corporate influence impressed itself so upon the minds, upon the individuality, upon the sentiment, and upon the consciousness of those gentlemen that they do not make this bill go as far in remedial legislation as the situation demands.

Why a double appeal? Why this interminable litigation? Why not put into their bill that when the orders of the Commission are violated deliberately, that the court can either fine or imprison? The Hearst bill does that. Why, what do these people who make up a great corporation and a great trust care about a fine of ten or twenty thousand dollars after a civil judgment is obtained? But you have got to convict the corporation before you do even that. Who would want to unreasonably imprison a citizen of this country? Who would care to take a man of high standing and wealth and unnecessarily degrade him? But why not put in this legislation direct notice to these men that they are not so high or so rich or so powerful or so high in their social influences that they are above the laws of the land? Why not write it into this legislation that if they willfully violate these laws that a court can fine or imprison as it sees fit?

Why not hold this rod, this whip, if you call it that, over the heads of the violators of the law, whether they be big or whether they be little? Then, sir, you would see a situation in this country similar to that which has been exhibited in England, where they do not pay much attention to the question whether violators of the law are big or whether they are little. When Whitaker Wright put out his false prospectuses to the British people and outrageously fooled and swindled them, what did the English Government do? It arraigned him in court, tried him like a common felon, convicted him, and in order to escape the penitentiary he suicided in the court room. It is the willful and repeated violator of the law that imprisonment should be inflicted upon.

I aim my remarks at no railroad man. Mr. Chairman, I have some good friends among these railroad gentlemen. Some of my relatives are engaged in railroading, own stocks and bonds, and are actively engaged in the management of those corporations.

I would not reflect upon them, and I have no reflection to make upon any of those distinguished gentlemen in the land, many of whom I honor for their high social position, their great character, their great minds, and their great abilities. I freely concede it, and I make no insinuations, no indirect charge, nothing that will reflect upon any railroad man of this country. I merely say, write into the laws of the land that anybody holding these vast instrumentalities for good and evil who shall willfully trample upon the rights of the people of the land shall suffer punishment by imprisonment as well as fine. That is all I say, and the Esch-Townsend bill is deficient in that, while the Hearst bill contains that alternative, so that wherever a violator of the law has broken it willfully the court can apply the imprisonment feature. What judge, unless he was a lunatic or an absurd fool, would think of taking any man of high standing and good character and subjecting him, upon a mere whim or for an accidental violation of the law, to the imprisonment feature? Never!

But, Mr. Chairman, if that man, be he high or low, willfully violates the laws of the land, willfully does what the President of the United States says is wrong, what these two political parties ought to say is wrong, why not make him amenable to a criminal statute, if he has willfully and wantonly done it and repeated it? Why not make him liable to the criminal feature of this statute as well as subject the corporation to a fine? The Hearst bill accomplishes that.

Mr. Chairman, I was astonished and amazed at the declaration of my friend the gentleman from Alabama [Mr. RICHARDSON], who is not here now, when he said that the worst feature of the Hearst bill, and that which he objected to more than any other, was that it provided that the Interstate Commerce Commission should compel these lines of railway to furnish cars to the people on their lines. Why, Mr. Speaker, he spoke as if that was some indefensible and outrageous attempt to perpetrate a fraud upon the rights of the railway.

I say that unintentionally the best friends that the railroads wantonly violating the laws of the land have in this body are my honest friend from Alabama [Mr. RICHARDSON] and gentlemen who superficially think as he does. Why? That clause in the Hearst bill was put in there to cure the evil growing out of the facts disclosed in Mr. HEARST'S suit against the coal trust. It there appeared that the coal-carrying roads, who own the railroads, who own the mines in Pennsylvania, who own 90 per cent of the unmined anthracite coal in that State, who own all the means of transportation except over two railroads, who have complete power to put up and put down the price of coal whenever they please—their own freight agent, the freight agent of the Reading Railroad, testified that whenever they saw fit they canceled their tariffs and cut off the supply of cars and stopped running them. Just as soon as the coal trust got the markets of New York loaded up with their coal they cut off the supply of cars, and there is no law to prevent it, because the present statute says that action can be taken only when they give undue preference in furnishing cars. And how can they give me undue preference over you when they give neither one of us any cars? There is the fraud in it; there is the outrage in it; there is the wrong in it. Just as soon as the market supply in New York begins to sag, then they put on these tariff rates again, and away go the cars of these six consolidated companies, bearing their own coal to the markets of the world. Just the moment that they get that market filled up and just about the time the independent operator finds that cars are running again and begins to make application for cars, they cut off their tariff schedules and stop furnishing cars. That clause was put there by somebody who is a good judge of what is going on in this country, and it was put there to cure direct, unmitigated, atrocious evils, one of the most outrageous and cruel forms of discrimination practiced in favor of one shipper—and that shipper themselves, and they a complete monopoly, owning nearly all the coal fields and nearly all the means of transportation. Yet my friend from Alabama [Mr. RICHARDSON], without thinking of this, without studying this bill, without looking up the defects in the present law, damns the Hearst bill on the floor of this House and challenges it for fair dealing, because, he said, it had that provision in it.

That provision was put there by somebody who knew the facts growing out of the litigation that arose against carrying on this monopoly in Pennsylvania. Why, Mr. Chairman, the sins of the railroads in America are enormous. They built up the trusts, and I cite to you, if you do not believe Democratic testimony—sometimes you find Democrats that will not believe a Republican, and sometimes you find, possibly, a Republican that will not believe a Democrat [laughter]—but if you won't take the word of one on this side of the House, remember what the lamented and distinguished Senator from Massachusetts said—that the trusts of this country, in addition to doing half a dozen other things that he charged against them, were corrupting the officials of the country and legislators.

If Mr. HEARST should publish a similar statement in the New York Journal to-morrow morning, he would be denounced as a socialist or an anarchist.

Mr. GAINES of Tennessee. Will the gentleman allow me an interruption?

Mr. LAMAR of Florida. I will.

Mr. GAINES of Tennessee. In the recent beef-trust case Justice Holmes stated that he sees no reason under existing law why the railroads can not permit private parties to furnish these private cars that the gentleman has alluded to. He does not see anything unlawful in it. In other words, there is no law against it. This is what he says:

> The acts charged in the tenth section, apart from the combination and the intent, may, perhaps, not necessarily be unlawful, except for the adjective which proclaims them so. At least we may assume, for purposes of decision, that they are not unlawful. The defendants severally lawfully may obtain less than the regular rates for transportation if the circumstances are not substantially similar to those for which the regular rates are fixed. (Act of Feb. 4, 1887, chap. 104, sec. 2, 24 Stat., 379.) It may be that the regular rates are fixed for carriage in cars furnished by the railroad companies, and that the defendants furnish their own cars and other necessities of transportation. We see nothing to hinder them from combining to that end.

We see nothing—

Says the court—

> to hinder them from combining to that end.

As I understand it, that "private cars" can be used under the present law.

Mr. LAMAR of Florida. Yes. Now, Mr. Chairman, I do not mean to arraign the railroads, but I do not intend to submit

passively under the arraignment of gentlemen who want no legislation, who denounce it as socialistic, as leading to Government control, while, on the other hand, I want to speak upon what I believe to be the outrages of the railroads of this country. What are they? They built up two-thirds of the trusts of this country by giving preferential rates over independent operators. They have not only made millions, but they have crushed out the independent operators of the country. They have risen to great heights of wealth over the prostrate forms of their fellow-citizens, and without remorse, because they have opposed this legislation to-day. They have, by private cars and exclusive contracts, built up the beef trust of this country. Mr. Chairman, it has raised the price of meat to every household in the land, which the Attorney-General of the United States has lately denounced and which the Supreme Court in a late opinion has confirmed that denouncement and have held them up as willful violators.

I do not wonder, Mr. Chairman, that the Pennsylvania delegation threatened to bolt on this Esch-Townsend bill. I say that with the greatest respect for the Representatives of that great State, but in that rock-ribbed, tariff-fed State, in that State traversed by these great and powerful corporations, I do not wonder that their influence and voice is potential.

In the disclosure Mr. HEARST made in his arraignment before the Interstate Commerce Commission of this trust, the evidence came out that the coal-carrying railroads have driven out the independent operators, by ownership or by contracts, for 90 per cent of all the unmined anthracite coal in that State. They own all the means of transportation, with two exceptions, to the seaboard, and under the tremendously high rate of $1.55 a ton they have driven the independent operators out of business and have an exclusive monopoly.

What does that mean, Mr. Chairman? You will understand it when I say that for the last five years they have raised the price of domestic-size coal $1.14 higher than it was four or five years ago. You will understand it when I say that they have mined 60,000,000 tons of coal yearly, and you will understand it better still when I say that 60 per cent of that is of the domestic size. These flagrant abuses have made the "coal barons" multimillionaires.

It is against these powers for combination and coercion that this legislation is aimed. To bring in a bill here that is impotent, that is lame, one legged, is a disappointment, Mr. Chairman, to the American people. And yet gentlemen will arraign men who speak of these iniquities as enemies almost approaching profanation of divinity.

I submitted, Mr. Chairman, in my speech last week, when I had the honor to address the House, some statistics from the Interstate Commerce Commission, from Professor Parsons, in Boston, from Poor's railway figures, from the decisions of the Supreme Court of the United States that 25 or 50 per cent of the wealth and capitalization of these great railroads was inflated.

Now, if capitalization has nothing to do with the earnings, why not undercapitalize as well as overcapitalize? Why not put out bonds and stocks if it cost $25,000 a mile to build and equip a railroad as if it cost $15,000 a mile? Why not, if it cost $100,000 a mile, put them out as if it cost $60,000 a mile? It is because when you overcapitalize you expect to raise the price of the stock and bonds in the markets of the world by the earnings, and those are drawn out of railway rate charges, and those railway tariff charges are put there for making earnings, and the stock and bonds are swelled in value to make a profit for this overcapitalization.

That is the whole of it, and yet the gentleman from Minnesota [Mr. STEVENS] gave a peculiar reason why this Esch-Townsend bill would not accomplish all its Republican advocates hoped for it. Why? Because, said he, many of the rates are too low, and the balance of them are about reasonable. Mr. Chairman, does that conform to the opinion of the expert, Mr. Prouty, the member of the Interstate Commerce Commission? Does he not testify, and is it not shown in his testimony set out in the remarks which I had the honor to submit here a few days ago, that railway rates are not falling, but increasing—that rates are still rising? And how does he define an excessive freight rate? As something that touches everything that every man in this land eats and wears. It is a tax that goes with you from the cradle to the grave, one of the most onerous, insidious, and blasting taxes, from the simple fact that it is almost insensible. You scarcely know when you pay it. You feel it in the price of every article, but you do not know where that increased price comes from. Part of it is from the increased freight and passenger rates put on by the railroads of this country. Yet gentlemen will denounce the advocates of this necessary remedial legislation as men who seek to overthrow vested rights. Mr. Chairman, I still adhere to the definition I made a few days ago, without reflecting upon the motives of any man; I still adhere to that definition, and I announce it again. I define the conservatives in this country who are discussing this railway-rate question to be those great railway presidents who, by virtue of high salaries and part ownership in the properties of these railroads, are not disinterested witnesses on this question.

I name the eminent railway lawyers of this country, who draw great salaries, and whose voices raised in protest against this legislation are the voices of their employers. I name you a third class, viz, the newspapers of this country, whose stock is largely owned by railroad magnates and trusts and allied interests, and whose editorials reflect nothing but the voice of their employers. The other class is composed of public men who will not study this question, who will not go to the bottom of it, and who look upon it with the prejudice of their environments, surrounded by their friends and by these enormous interests. Their views partake of the nature of those who put them out. Yet, without examining this car question in the Hearst bill, he denounced that bill in this House as unjust, when that bill sought to correct one of the most flagrant abuses now existing in railway circles in this country. And I say that is a confirmation of my charge that public men have not studied the question.

Mr. SULLIVAN of Massachusetts. Mr. Chairman, I would ask the gentleman if he is referring now again to the so-called "Hearst bill?"

Mr. LAMAR of Florida. Yes.

Mr. SULLIVAN of Massachusetts. I would like to ask the gentleman how anyone could read the bill when for the last few days it was impossible to procure a copy of it?

Mr. LAMAR of Florida. I can not understand that, Mr. Chairman. I have had a copy and I supposed everybody else had one. That is not my fault, and the bill has been on file. There are only two amendments to it. The bill has been on file since the 13th of March, 1904.

Mr. HUGHES of New Jersey. I would suggest to the gentleman that that may be explained by the popularity of the bill throughout the country and the demand for it.

Mr. LAMAR of Florida. It may be as the gentleman suggests, that the demand was so great, but I understand that it is in the report. It has been on file in the document room.

Mr. WILLIAMS of Mississippi. Mr. Chairman, it would be right interesting to tell where the demand came from. It would be interesting to go to the document room and try to find out who got them.

Mr. SULLIVAN of Massachusetts. I will inform the gentleman from Florida [Mr. LAMAR] that I was exceedingly anxious to peruse the terms of this perfect piece of legislation, and I went to the document room several days ago and was unable to find a copy.

Mr. LAMAR of Florida. If the gentleman will do me the slight honor, I will offer him one now.

Mr. SULLIVAN of Massachusetts. It is too late now, as the gentleman admits; but I will say further that I have not had as yet the benefit of a lucid explanation of its terms, even by its advocates on the floor of this House.

Mr. LAMAR of Florida. Mr. Chairman, I can not furnish the elucidation of the bill and furnish to the gentleman the comprehension of it also. I will say this, Mr. Chairman, that with two exceptions the bill brought in by the gentleman from Missouri [Mr. SHACKLEFORD] and myself is the identical Hearst bill that was introduced into this House nearly one year ago—nearly one year ago, I repeat—with the exception of two clauses, and they are merely put there to cover beyond any cavil the private-car-line abuse and the terminal abuses. The Hearst bill really provided against these two evils. Why, the gentleman has had the amplest opportunity, and the mere fact that he had never taken the occasion to go to the room of the Interstate Commerce Committee or to the files of the House to inform himself on a piece of proposed legislation which has been pending for one year is another proof postive that he has not studied this question and has not given to it a particle of attention.

Mr. SULLIVAN of Massachusetts. Mr. Chairman——

The CHAIRMAN. Does the gentleman yield?

Mr. LAMAR of Florida. I have such a limited time——

Mr. SULLIVAN of Massachusetts. Following out the gentleman's suggestion——

The CHAIRMAN. Does the gentleman from Florida yield?

Mr. LAMAR of Florida. I yield.

Mr. SULLIVAN of Massachusetts. I would say one year ago I was virtually ignorant of the name of the distinguished author of this bill, and although a year has passed the gentleman has

not taken an opportunity to explain his own bill on the floor of this House, which I, as one Member, would have welcomed. [Applause.]

Mr. LAMAR of Florida. Well, Mr. Chairman, I will say that if Mr. HEARST were here he would be gallant enough to say that not to know the gentleman from Massachusetts would argue himself unknown. But still the gentleman has had the amplest opportunity. That bill has been on the files nearly a year. It touches a great subject. It is drawn with the utmost skill, with a complete knowledge of practical railroad abuses and how to meet them—how to effectually put a stop to them. I have not sought to go into the minute details of the Hearst bill, for my hour would not permit it. I sought to draw the attention of this House to the manner in which it provides in its terms as against those contained in the Townsend bill for the suppression of railway-rate abuses.

It seeks to put an end to these private terminal fees and the private-car lines. It confers upon the Interstate Commerce Commission the power which the President recommends and which is not contained in the Esch-Townsend bill or in the Davey bill, viz, that upon connecting rail and river routes it shall be in the power of the Interstate Commerce Commission to fix the rate. And why? What benefit is it to the grain shipper to have his wheat drawn up to the margin of the Great Lakes at a reasonable rate and then have the boat confiscate it between there and the seaport? That happens under these great grain shipments in the Northwest, where the railways and the boats are operated not in common. That is what the Republican President advised you to do. It is not in the Esch-Townsend bill or the Davey bill, but it is in the Hearst bill.

Mr. WILLIAMS of Mississippi. Mr. Chairman, will the gentleman yield for a question?

Mr. LAMAR of Florida. Yes.

Mr. WILLIAMS of Mississippi. The gentleman, I believe, is a member of the Interstate and Foreign Commerce Committee?

Mr. LAMAR of Florida. Yes.

Mr. WILLIAMS of Mississippi. The gentleman has been attending the conferences of the minority members of that committee during last session and this, several of them, has he not?

Mr. LAMAR of Florida. I have.

Mr. WILLIAMS of Mississippi. Did he ever at any of these conferences at any time propose to put in the legislation which he is now advocating as to private cars upon the bills we were considering in any of its conferences?

Mr. LAMAR of Florida. Upon the bill?

Mr. WILLIAMS of Mississippi. Yes.

Mr. LAMAR of Florida. Mr. Chairman, I will say this in answer to that. I will be very frank. I wanted to wait until the very last minute before I determined my ultimate views and then to come into this House and stand intelligently upon this great question.

Mr. WILLIAMS of Mississippi. But the gentleman will appreciate——

Mr. LAMAR of Florida. I will answer——

Mr. WILLIAMS of Mississippi. But the gentleman is not answering. My question is this, Did he at any time or did any other member of the minority upon that committee at any time to his knowledge at any conference held by them at the last session or this——

Mr. LAMAR of Florida. No.

Mr. WILLIAMS of Mississippi. Propose to put private car lines upon the bill they were considering and molding to be presented in this House?

Mr. LAMAR of Florida. No. I approved of the Democratic caucus on the Davey bill as to the provisions included, but they did not go far enough. I did not approve of it if it limited my views to the Davey bill. I say that I believe that my distinguished leader intended and did accomplish that much and did a patriotic thing in doing it. He wanted to signify at an early date to the country that he is willing to put into legislation in this House the cardinal features of rate making and rate revising. That is what the gentleman from Mississippi [Mr. WILLIAMS] intended, and I was behind him and with him and followed him, and I believe it was a good move to that extent.

I felt that the Davey bill was too inadequate, however, to meet fully my views or my approval. I could not go back to my State, that has suffered so much under these excessive interstate railroad rates, and justify my position in so limited a declaration of remedy as is contained in the Davey bill. I have no attack upon the Davey bill to make.

On a question of such great magnitude with my own people, people who are educated upon this question of railway abuses and railroad rates, I could not go back to them and justify my position upon so limited a series of remedies as was contained in the Davey bill. The purposes for which it was introduced I indorse heartily.

Mr. Chairman, kindly inform me how much time I have remaining.

The CHAIRMAN. The gentleman from Florida [Mr. LAMAR] has fifteen minutes.

Mr. JAMES rose.

The CHAIRMAN. Does the gentleman from Florida [Mr. LAMAR] yield to the gentleman from Kentucky [Mr. JAMES]?

Mr. LAMAR of Florida. Certainly.

Mr. JAMES. Was there an effort made when this bill was under consideration before the Interstate and Foreign Commerce Committee to place in the clause for violation of it the imprisonment penalty?

Mr. LAMAR of Florida. I will say this, that the Hearst bill has that proviso, and I will say this—and I will violate no confidence, I think, when I say it—that Mr. SHACKLEFORD and myself—we were all Democrats in there together—wanted to substitute the Hearst bill for the Davey bill. Four did not want it done and two of us did. We were very much in the minority. We are in here without a bill that can be considered by this House.

Mr. JAMES. I am referring to the original action of the committee. Was an effort made there by the minority of the committee to force the Townsend bill to carry with it an imprisonment penalty for violation of the law?

Mr. LAMAR of Florida. Nothing at all, except this: Mr. SHACKLEFORD and myself wanted to come in with a second minority report, with division of time, so that our bill—the Hearst bill—could be offered as a substitute for the Davey bill and the Esch-Townsend bill, and the gentlemen of the minority would not let us do it under the rule. They just quietly sat down on our minority of two, Mr. SHACKLEFORD and myself, and we are here without a bill. All we can do is to talk about it.

Mr. DAVEY of Louisiana. As I understand the question of the gentleman from Kentucky, he asks the gentleman from Florida if there was any effort made to amend the Esch-Townsend bill now before the House. Is that your question?

Mr. JAMES. By placing in the bill the penalty of imprisonment for a violation of the law.

Mr. LAMAR of Florida. I do not think so. I do not recollect it except as we offered to substitute the Hearst bill.

Mr. JAMES. That carried the imprisonment feature with it. I asked the question because I am in accord with you in believing that there should be an imprisonment penalty.

Mr. LAMAR of Florida. I do not think there was.

Now, Mr. Chairman, I am through, with the exception of a few words.

Upon the question of Government ownership I have not formed any opinion. It is not before the country. It may never reach us. It may never reach the shape of a tangible public question for settlement. But I will say this: That if I had to endure forever the abuse of the railway systems of this country, making too much interest on their stocks and bonds without putting enough of their money upon betterments, upon better cars, upon safer bridges, upon better platforms, upon everything which would prevent such an appalling loss of life and list of railway accidents that the reports of them read like a report of the casualties at Port Arthur; if we had to endure these high freight rates forever and the consequent crushing burden upon the resources of this country, and could never get relief by Government regulation, then certainly it could not be worse under Government ownership, and it might be better. I think that the allied railroad interests had better join in with this movement for fair regulation. Let them come in with the people and get in as copartners in the business of this country, and share the burdens and prosperity of the country, and not inflict, through these devices, these extraordinary losses upon the public. If they will, let them place themselves in the front and assist in this movement, or they will be up against a movement for Government ownership which they can not control, and when they reach the point where they say they will yield, then the other side may say they have not any point to concede. Mr. Chairman, if I have any time, I desire to reserve it so that I may yield it to other gentlemen who desire to to concede.

Mr. Chairman, if I have any time, I desire to reserve it so that I may yield it to other gentlemen who desire to speak.

The CHAIRMAN. The gentleman has eleven minutes remaining. The gentleman reserves his time.

Mr. HEPBURN. Mr. Chairman I yield fifteen minutes to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Chairman, I would content myself with simply voting for the bill as reported by the Committee on Interstate and Foreign Commerce but that I wish to assign two specific reasons why I think it ought to be enacted. I believe the first section of this bill does authorize the Interstate Commerce Commission to promulgate regulations in specific

cases controlling the so-called "switch-track and terminal facility evil," and also controlling the private-car evil. It appears that the Committee on Interstate and Foreign Commerce has these evils under specific consideration; but that committee has not yet been able to evolve such specific legislation as, in the judgment of the committee, will meet these difficulties.

In the closing hours of this session legislation which has not yet been evolved upon that subject can not hope to be enacted into law. Here is an opportunity, then, until such time as Congress can wisely and intelligently act so as to govern and control these evils directly, to confer upon the Interstate Commerce Commission the power to make such regulations as will abate or do away with these causes of complaint. It seems to me manifest that in the situation that is now before us the wisest thing is not to try to pass laws directly upon the subject of the private-car evil and the evils of rebates in the form of allowances for switch-track and terminal facilities, but to turn over to the Interstate Commerce Commission the power to reach these evils through the railroads that are already under their control by the existing law and will be further under their control by this law. While I would personally be glad to see the private-car lines directly under the control of the Interstate Commerce Commission, if they can not be placed there immediately and we can immediately provide that the Interstate Commerce Commission shall have power to establish regulations as to what shall be allowed for the use of these cars and for the use of terminal tracks, then we have largely solved that difficulty by reaching the railroads rather than by putting those institutions under the charge of the Interstate Commerce Commission.

So we will have effected the reform sought, even though the legislation may not yet be fully perfected by which we would have put these other institutions under the charge of the Interstate Commerce Commission. I can not see for myself why we can not control these evils as well by regulations upon the railroads as we can by regulations upon the private-car lines, and regulations with reference to the owners of switch and terminal facilities.

Mr. UNDERWOOD. Mr. Chairman, will the gentleman from Iowa allow me to ask him a question?

Mr. SMITH of Iowa. Certainly.

Mr. UNDERWOOD. When the party in power passed the Elkins bill, known as the "antirebate law," they provided that it should not apply to private cars; and because, as I understand the law, the rebate did not apply to private cars under the power given in this bill, the Interstate Commerce Commission will have no power to prevent them from getting rebates, unless we legislate it into this bill.

Mr. SMITH of Iowa. I can not agree with the gentleman from Alabama as to the true construction of the first section of this bill. It is true, as I understand it, that before this evil of the private-car line and the private switch and terminal track system was brought to our attention we passed the Elkins law, and these matters were not covered by it because we were not then fully advised of the evil.

Mr. UNDERWOOD. But the Elkins law does not apply to private cars.

Mr. SMITH of Iowa. But this later law will provide that if upon complaint the Interstate Commerce Commission finds that any regulation or practice is discriminatory it may forbid the further continuance of that regulation or practice and prescribe what regulation or practice shall prevail in the future.

This bill expressly provides that if any regulation or practice be discriminatory it may be forbidden, and the Interstate Commerce Commission may prescribe the regulation or practice that is to prevail in the future.

But it is not specially with reference to this subject that I rise, Mr. Chairman. A respectable body of business men in the State from which I come, the Manufacturers' Association, have expressly declared against a central court. I believe that they are mistaken, and I want to tell you why.

Under the old law suit had to be brought on behalf of the Interstate Commerce Commission to put its orders into effect. The Government of the United States had the selection of the court in which that suit should be brought.

But it is the desire of the people that these rates shall be made obligatory upon the railroad companies until they have been set aside by the courts. And so, under the proposed legislation proceedings are to be instituted, not by the Government but by the railroad company. And as soon as the law is thus changed, if no other change be made, you provide—and that is the effect of the Davey bill—that the railroad company shall have the right to select the Federal court in which it will institute its proceedings. Under existing law the circuit court of the United States sits wherever the district court is in session, and every district judge exercises circuit-court powers; so that more than 100 circuit courts of the United States in effect exist in which proceedings can be brought under the "Davey bill," so called. Every interstate rate is an interjudicial district rate, and if the Davey bill should pass, then the railroad company would have the right to go along the line of the route covered by the rate, seeking a judge who would grant an injunction and finally restrain this rate. I am not here to charge——

Mr. SCUDDER. Will the gentleman yield for a question?

Mr. SMITH of Iowa. I would have preferred not to yield right in the middle of a sentence, but I will yield now.

Mr. SCUDDER. I did not mean to interrupt in the middle of a sentence; but the gentleman's remarks as applied to the judiciary seem to betoken very slight confidence in our judiciary. I interrupted the gentleman——

Mr. SMITH of Iowa. That is hardly a question, Mr. Chairman.

Mr. SCUDDER. I interrupted the gentleman to ascertain whether or not that opinion, as I seem to understand it, is advised.

Mr. SMITH of Iowa. If the gentleman had failed to interrupt me he would have found that I was about to say that I did not purpose to assail the integrity of any district judge of the United States, even though the gentleman has lately been engaged in that business.

Mr. SIMS. How could there be a selection without a preference?

Mr. SMITH of Iowa. There may be differences of opinion among honest men, and it is proposed here that the railroad company shall have the right to seek the judge that it believes has the most mental tendency to sustain its contentions, in good faith and in honor.

Not only that, but it is sufficient to say that this petition or bill for injunction can be packed from judge to judge, taking the judgment of each man they meet, until they find one who will grant the injunction and restrain the rate. Not one who would dishonestly do so, but one who was so mentally made up that he thought it ought to be issued, although many others thought it ought not to be issued, a very different situation from that which existed when the Government was entitled to select the forum.

The committee bill provides for a single court to which this application must be made, that no injunction shall be granted unless that one court will grant the injunction. This bill further provides that that court shall be a court devoting its whole time to this subject, until those judges ought to become as great rate experts as any employed by the railroad company. The other alternative is to submit, perhaps, a case a year to a district judge of the United States sitting and holding a circuit court who has had no experience in rates, who is able only to give it attention consistent with the discharge of his other duties. This bill provides for expert efforts to get just rates by men who devote their entire time to the study of the subject.

Mr. SIMS. Does the gentleman from Iowa think that five circuit judges will become expert after holding court for one year?

Mr. SMITH of Iowa. The bill provides that the term shall be five years, and that they shall be eligible for redesignation.

Mr. SIMS. But it provides for the appointment of a new one every year.

Mr. SMITH of Iowa. Only one every year to fill a vacancy by the retirement of one man, and the bill provides that the old man may be redesignated. The men are to serve five long years doing nothing but to pass upon rate questions.

Mr. SIMS. An opportunity is given to remove one expert every year.

Mr. SMITH of Iowa. An opportunity to remove one, and get a little new blood into the court, but the body of that court at all times will have a great experience in passing upon rate questions. I therefore look with more favor upon this portion of this bill than any other, because it deprives the railroads of the privilege of hunting a court in which they want to try their case, and makes the railroad and shipper abide by the judgment of this single court.

There is another reason why I believe this ought to be the law. This case is to be tried in the court of transportation upon the record before the Interstate Commerce Commission and to be presented in behalf of the shipper by the Attorney-General of the United States and those acting under him. If the Government thus assumes the whole expense of caring for the defense it is unnecessary for the shipper to attend court, and the Government of the United States ought not to be required to attend at the several hundred places where the circuit court of the United States is held.

Now, Mr. Chairman, it does seem to me that one of the most beneficent provisions contained in any of the bills proposed on this subject is this creating a central court of transportation.

And notwithstanding capable and able business men in Iowa differ from me in that respect, I shall with pleasure vote for this whole bill, and for no part of it with more pleasure than for this part to which I have just referred. [Applause.]

Mr. GAINES of West Virginia. Mr. Chairman, it is with regret that I detain the committee at this late hour of the day. I might also say, Mr. Chairman, that I regret the fact that the bill is considered in the manner in which it is considered, without an opportunity for amendment. I am one of those who believe that this House may be trusted to legislate. I am in favor of this bill, however, because I am now, and for a long time have been, in favor of some addition to the powers of the Interstate Commerce Commission to regulate the rates, regulations, and practices of the railroads of the country. I would have been glad to see this bill amended so that it might provide definitely the persons who should haye the power to invoke the aid of the Commission, and particularly that the railroads should have that power.

The first section of this bill provides that it shall be effective whenever any complaint is made under section 13 of the act to regulate commerce. Section 13 of the original act to regulate commerce makes no provision that the common carrier complained of may at any time invoke the jurisdiction of the Commission. Section 13 provides that—

> Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act and in contravention of the provisions thereof, may apply to said Commission by petition.

I should be glad to see this bill so amended that it would in specific terms give to the common carrier, whose rate may be changed by the Commission, the right at any time to apply to have the order of the Commission changed. I can conceive, Mr. Chairman, that a rate fixed by the Commission might, in a very short time, although properly fixed by the Commission at the time it made its order, cease to be a just rate from the standpoint of the railroad company under changed conditions.

I should be glad to see the second section of this bill amended in what I deem to be a very important particular. The proviso at the end of the second section is as follows:

> That any rate, whether single or joint, which may be fixed by the Commission under the provisions of this act shall for all purposes be deemed the published rate of such carrier and subject to the provisions of an act entitled "An act to further regulate commerce with foreign nations and among the States."

Now, Mr. Chairman, I have two reasons for wishing that might be amended. In the first place, I think it ought to state how long such a rate should be in force; or, better still, state that such a rate shall be in force until it is changed in some manner that I think should be provided. If such a rate is permanent, then injustice might be done to the railroads.

On the other hand, again, I see this danger, that in view of the fact that the act provides that a rate so fixed by the Commission shall be deemed for all purposes the published rate of the carrier, the carrier might, under that language, be held by the courts to have the power at any time to change the rate, because the published rate of a carrier under the act to regulate commerce may be changed by the carrier at any time upon filing for ten days prior to the time the change is to take effect a new published rate with the Interstate Commerce Commission. In order to hold, under this bill, that the carrier may not at any time change its published rate—this rate to be fixed by the Commission, which under the act is declared to be the published rate of the carrier in all respects—as well as any other of its published rates, we are compelled to say that the courts will hold by implication that because it is a published rate which was fixed by the Commission and so declared by law, it is in a different condition from any of the other published rates of the carrier.

But the Supreme Court of the United States has repeatedly held with reference to the rate-making power of the Commission that nothing will be taken by implication. And it seems to me it would be safer at this time to have amended the act so as to provide by the language of the act itself how long such a rate is to remain in effect, by what method it is to be changed, and upon whose complaint it may be changed. But, Mr. Chairman, the necessity for some legislation on this subject, the necessity for giving the Interstate Commerce Commission the power to fix a rate upon a case made, is, in my opinion, so great that I am glad of the opportunity to vote for this bill, although I should have been glad to amend it before doing so.

The railroads of this country touch the people at too many points, their interests are too great, there are too many persons and too great interests affected by them to leave them longer without adequate governmental regulation, unless such governmental regulation should be violative of the rights of the railroads, or unless it should involve some new and dangerous principle of government.

In 1893 the transportation cost in this country was $17 per capita. Ten years later, in 1903, it was more than $23.31 per capita, an increase of $6.31 per capita in ten years. The net income of the railroads in 1903 was, in round numbers, seven hundred and thirty-four millions. The total Government receipts for the same year were, in round numbers, six hundred and ninety-four millions. In other words, the net receipts of the railroads exceeded the total receipts of the Government by more than $40,000,000.

The gross receipts of the railroads for the year 1903 were, in round numbers, $1,890,000,000, indicating, Mr. Chairman, that the interests affected are so great that there should be Government regulation, unless, as I have said, some right of the railroad is violated by the Government regulation, or unless it involves some new and dangerous principle of government. It will not do to say that a few men should not control railroad rates and to use that as an argument against giving additional power to the Commission, because a fewer number of men than those contemplated to form this Commission for the future do now, or may now, practically control the railroad rates of this country.

One of the Interstate Commerce Commissioners stated that for the year 1903 five systems of railroads in this country embraced 117,500 miles of railroad, which was made up as follows: The Vanderbilt system, 19,500 miles; the Pennsylvania, 18,000 miles; the Morgan-Hill, 43,000 miles; the Gould, 16,000, and the Harriman, 21,000 miles. The Commissioner stated that when the Atchison, the Rock Island, the San Francisco, and the Milwaukee were brought under control then there would be left only 70,000 miles of railroad in this country, and that those 70,000 miles were mere feeders to the others.

The principal question, therefore, is not whether the Government of the United States should further regulate railroads, but whether it may do so without interfering with the just rights of railroad property and without introducing into our Government any new and dangerous idea.

Now, the question of railroad regulation is no new one. The railroads have been regulated ever since we have had them. The principle of the common law that the State may regulate common carriers is much older than the railroads, and its exercise has been continuous. There is no question of a new power. There is no question of an interference with private property brought into this controversy, for I want to say here if there were I believe there is no man in this House who would be slower to interfere with private property than I would.

To understand this question it is necessary to understand what a railroad is in the conception of the law. Is a railroad private property, so that a regulation of its rates is an interference with private property, or is it of such a public nature, or quasi public nature, that we may take the course proposed by this bill without in any way interfering with private property? A railroad, in the conception of the law, is a public agency operated by private capital; and the reason why the public may, in justice, regulate railroads, the reason of the law that has always permitted the regulation by the state of railroads, is that the railroads owe their existence to the public; they owe their very existence to the exercise by themselves of a public right.

Railroads come into existence only because they are given by the public the public right of eminent domain. The right to take private property is given them, and for that reason, in common justice as well as in law and in the public interest, the public right to use these railroads may be regulated by the state; and such regulation amounts to no interference with private property. The Supreme Court of the United States has declared in a case involving the regulation of railroad freight rates that—

> The public have a right to be exempt from unreasonable exactions; and the interest of the corporation is not the sole test of suitable rates.

And again in the same case the Supreme Court said:

> A railroad corporation accepts its rights, privileges, and franchises subject to the power of government by legislation to protect the people against unreasonable charges by it.

And in the same opinion the Supreme Court lays down the limitation upon the right of public regulation as follows: "It [the railroad] can not be required to use its property for the public without just compensation." Again the Supreme Court, after having cited a number of cases, says:

> These cases all support the proposition that while it is not in the province of the courts to enter upon the merely administrative duty of

framing a tariff of rates for carriage, it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property.

I maintain, and claim for them the authority of the Supreme Court, these propositions: In the first place, that the right exists in the Government to regulate the rates and practices of railroad companies, and in the next place——

Mr. HILL of Connecticut. Mr. Chairman, will the gentleman yield?

Mr. GAINES of West Virginia. Yes; I yield.

Mr. HILL of Connecticut. Do you claim on the same grounds the right of the Government to regulate telephones, telegraph, and express rates, that they are common carriers doing interstate-commerce business?

Mr. GAINES of West Virginia. I think so; yes.

Mr. HILL of Connecticut. It is not, then, simply a question of the right of eminent domain. It is simply that of a common carrier?

Mr. GAINES of West Virginia. I would not limit the right to eminent domain alone; but not only the law but the justice underlying the law, the reasons out of which the law grows, seem to me to be amply shown when we call attention to merely one reason why the Government may regulate railroads, namely, that the railroads themselves exist by the aid of public power. I do not mean to say that the reason I have assigned is the only one for the right of regulation, but I submit that as being sufficient of itself to show the reasons which underlie the legal right to regulate.

Mr. HILL of Connecticut. Of course they do not possess public power from the Government, but they possess it from the States. They get their franchises and charters from the States.

Mr. GAINES of West Virginia. Yes; they get their franchises and charters from the States.

Mr. WILLIAMS of Mississippi. Will the gentleman pardon a question?

Mr. GAINES of West Virginia. I yield to the gentleman from Mississippi.

Mr. WILLIAMS of Mississippi. Is not the power to regulate interstate commerce in the same clause of the Constitution where the power to regulate foreign commerce is?

Mr. GAINES of West Virginia. That is true.

Mr. WILLIAMS of Mississippi. Are not the two in the same clause, and is it not true that the right of Congress absolutely to stop foreign commerce if it chooses has never been doubted, and is it not true that under the Administration of Mr. Jefferson an embargo was put upon all foreign commerce?

Mr. GAINES of West Virginia. That is true.

Mr. WILLIAMS of Mississippi. And is it not true that the power over interstate commerce goes exactly to the length of the power over foreign commerce?

Mr. GAINES of West Virginia. I will not commit myself to the very extreme position taken by the gentleman from Mississippi [Mr. WILLIAMS] that Congress might intervene to stop all commerce, for I think that might well be limited by the other decisions of the Supreme Court of the United States to the effect that railroad corporations are persons in the meaning of the fourteenth amendment, that they are entitled not to have their property destroyed without just compensation or taken without due process of law, and are not to be denied equal privileges and rights under the law.

Equal protection of the law might intervene to limit the power of the Government over domestic commerce, and prevent it from having such power as the gentleman from Mississippi [Mr. WILLIAMS] would seem to imply by his question. I was not undertaking, if gentlemen will understand me, to say that the right of the United States Government to regulate commerce rested upon the right of eminent domain. The power of the Federal Government rests upon the interstate-commerce clause of the Constitution. But our feeling of the justice of the thing, of the moral right which underlies all these laws, and which shows that where we can we also ought to regulate railroads, comes from the great assistance the railroads have had from the public in their very establishment.

Mr. HILL of Connecticut. The gentleman from West Virginia [Mr. GAINES] would not claim, then, that the right which he claims the Government possesses is limited solely to the question of fixing the railroad rates? It must go, if it goes at at all, to the entire management of the railroad, must it not—to the general subject of railroad regulations, fixing the wages of employees, and all that sort of thing? You can not fix the price of products without fixing——

Mr. GAINES of West Virginia. I distinctly did not make that statement. I certainly decline to make the statement that the Government could regulate the wages of employees.

Mr. HILL of Connecticut. Then where does the gentleman limit the power of the Government? Does he limit it simply to the right of the Government to fix the selling of the products and have nothing to do with the cost of it?

Mr. GAINES of West Virginia. I would limit the power of the Government to the right to regulate the exercise by the railroad of its public duties, and I would deny to the Government the right to interefere with the private affairs of the corporation. I said at the outset that in the conception of the law, as I understood it, a railroad was a public agency operated by private capital.

The performance of its duties as a public agent the Government may regulate; but as to its private affairs, as a corporation, the Government can not interfere with it. And I said that the court had still further limited the right of regulation so far as to say that the legislative enactment that regulated corporations could not deprive a corporation of a just return on its property. It has been stated on the floor of this House that the Supreme Court had held that such regulations should not be "confiscatory." That is true if it is understood that it is confiscatory to deny a corporation a reasonable return on its investment and its property. Holding as I do the conception of a railroad as being a public agency, I do not agree at all with the gentlemen on the one hand who think that the Government should not intervene to regulate it, nor do I agree on the other hand with those gentlemen who seem to think that the public interest has been served when drastic laws have been passed to interfere with the just rights and privileges of railroads.

If a railroad is a public agency, then the people are interested in two things, and, in my opinion, interested in one as well as in the other. The first is that the right of the public to reasonable and fair service at the hands of this public agent should not be denied, and the other is that no law should be passed which would prevent the public agent from adequately serving the public. If we pass laws here that will prevent the railroads making adequate profits—if the rights of the railroads of the country can not be safeguarded so that they may render good service to the public—then we have stricken down a public servant.

We have the right in justice as well as law to regulate these railroads. Because they are public agencies we should take care not to cripple the railroads any more than we would any other sort of public agency. For that reason——

Mr. BIRDSALL. I want to inquire, or suggest, the additional power that rests in legislatures to prescribe the rate of interest that shall be paid by private individuals. Is that not based upon the ground of public policy?

Mr. GAINES of West Virginia. Well, I think that does rest upon the ground of public policy. Under the usury laws the Government has so long regulated the rate of interest that at this time it has become an undisputed right of Government. That is putting it upon a safe ground. It is not necessary for my argument that we should attempt to analyze at this time the right to prescribe the rate of interest.

Mr. BIRDSALL. Did it not grow out of an extortionate practice?

Mr. GAINES of West Virginia. I have no doubt it grew out of extortionate practices. Of course it did; and if I do not exhaust the time I have before the opportunity occurs I want to develop at a later time in my speech that one reason I am in favor of this bill is because I want to keep down extortionate practices on the part of the railroads.

I want to keep down any sentiment in this country to destroy the rights of private property and to keep down the sentiment of government ownership of roads. I deplore all these socialistic doctrines. I believe it is our duty to regulate a public agency in the interest of all the people, having due regard to the rights of those agencies as well as those of the people. I believe that if we do that, and provide an efficient system of regulation, this idea of government ownership and the socialistic ideas that go to the striking down of the institution of private property itself, will be arrested in their growth in this country.

I have no hesitation in saying, Mr. Chairman, that I would like to see a law passed that would give the Interstate Commerce Commission, as a part of the power to regulate, the power to raise as well as to lower a rate; for it is not in the interest of the general public that the rate should be too low. If one shipper gets railroad service at what is less than its cost to the railroad, or at a rate which does not give a just return to the company, then to that extent the public agency, the railroad company, has been rendered less able to do its duty to other people.

Mr. BIRDSALL. I would ask the gentleman another question, as to how hack fares are regulated in the District of Columbia?

Mr. GAINES of West Virginia. Well, they are regulated.

There may be a distinction. The fact that hacks and other public vehicles use the public roads may make a distinction, as has been attempted to be made to-day between the Government right to regulate hack lines and the Government right to regulate railroads, but certainly it is sufficient for my purpose, and it seems sufficient for this whole argument, to say that the power is given the Government to regulate the railroads, and this power rests upon ground solid in morals as well as in law.

How much time have I left, Mr. Chairman?

The CHAIRMAN. The gentleman has three minutes remaining.

Mr. HEPBURN. If the gentleman desires, I can yield him fifteen minutes.

Mr. GAINES of West Virginia. I should appreciate it, if I do not weary the committee.

The CHAIRMAN. What additional time was yielded?

Mr. HEPBURN. Fifteen minutes.

The CHAIRMAN. The gentleman is recognized for fifteen minutes additional time.

Mr. SIMS. Will the gentleman yield to me for a question?

Mr. GAINES of West Virginia. I will be glad to yield.

The CHAIRMAN. Does the gentleman from West Virginia yield to the gentleman from Tennessee?

Mr. GAINES of West Virginia. Certainly.

Mr. SIMS. Does the gentleman think this bill gives the Commission power to control terminal facilities located entirely within a State and simply occupied by rental of the railroad or by paid permission? What does the gentleman think about that?

Mr. GAINES of West Virginia. If I understand the gentleman's question, Mr. Chairman, I do think that the clause in the bill which permits the Commission to make an order changing an unjust and unlawful rate, regulation, or practice of the railroad company will reach that, if interstate commerce is affected.

Most of us, I suppose, Mr. Chairman, in legislation of this sort—and that, I am frank to confess, is often a source of bad legislation—have in mind frequently some particular practice that affects our own section and the interests of our own people. I believe that this bill is strong enough to control and to reach a practice that has grown up among the railroads of this country, and that, I think, is one of the greatest abuses known to transportation. That is the control of one railroad by another and competing railroad. If I am right in saying that a railroad is a public agency, if I am right in believing that a railroad should not be minimized in its power to serve the public, and that the public interest is not only not subserved, but lost sight of when an injustice is done to a railroad company, then certainly it is wrong for one public servant so to dominate another as to say that that other public agency shall not have full power to serve the public that it ought to serve.

In my own State we have three great coal-carrying railroads: The Baltimore and Ohio, the Chesapeake and Ohio, and the Norfolk and Western. They are all of them at this time, as everybody knows, dominated and controlled by a competing coal road, the Pennsylvania. The result of that is that the Pennsylvania Railroad may, and most informed persons think it does, parcel out among these railroads the territory that each may use as a market. Gentlemen have talked here about drastic measures being used. They have talked about the great power we propose to place in the hands of a Government commission. When we reflect that the railroads of this country are adopting such means that they may parcel the territory among themselves, partition off among themselves this country, certainly gentlemen will say that no matter how far our legislation goes that it can hardly put a greater power into the hands of a Government agency, to be used against the railroads, than now exists in the hands of the managers of the public corporations to be used against the people.

Most persons look at this as a matter of rates. It seems to be regarded generally that the effect of such a law will be always to reduce rates. Not all shippers want that. It is not always to the benefit of a community that rates should be reduced. A consideration, perhaps, of the very first importance to every community, certainly to every community served by one railroad, is that that railroad should not only keep up to the standard that it has had before, but that it should be so prosperous that it can give new and additional public service from time to time. If anybody operating a business along the line of a railroad—any concern, however large—should fail and go out of existence, nobody is injured except the comparatively few persons who are interested in that concern or have business with it; but if the railroad should be in the same condition—if it should be from year to year less able to give public service—the whole public tributary to that road suffers.

Not only that, but if such a railroad should not from year to year be more able to give public service; if it should not have better tracks, more cars, better bridges, more locomotive power, and better terminal facilities, then because new industries are starting up along the line, it becomes from year to year less able rather than more able to render the public service that it ought to render. Because it is a public agency, although it is operated by private capital, the public is interested in the railroad's prosperity. And I think that no man serves the business interests of his own community—no man, I believe, serves the public, or is in a frame of mind to serve the public and its best interests in connection with this subject—who does not at all times keep in mind the fact that one of the essentials to the prosperity of any community is that the railroads which serve it should not only live but become year by year more prosperous, and therefore more capable of rendering efficient service to the shippers and to the public along the line.

So that I should be glad, and am not afraid at all, at any time, to vote for a bill which looks to the maintenance of rates. I do not hesitate to say that while I have not reached an absolute conviction on this particular subject, I am inclined to think I would vote for a bill which permitted the railroads to reach an agreement for the maintenance of freight rates, provided always those agreements were published, and provided that before any such law should be passed we had also provided, and knew by experience that we had provided, some public agency of sufficient power, sufficient character, and sufficient intelligence to protect the public, both the shipper and consumer, against abuses which might arise by reason of any such agreement.

Mr. SIMS. Mr. Chairman, I am always interested in what the gentleman from West Virginia says, and I dislike to interrupt him, but I would like to ask this question.

Mr. GAINES of West Virginia. Very well.

Mr. SIMS. It is often the case that railroads when they undertake to make improvements, instead of doing it out of the earnings of the road do it by issuing stock and bonds. Now, is it not a fact that many railroad companies to-day could reproduce their tracks and equipment and rolling stock and everything for about one-half of the outstanding stocks and bonds, upon which they exact a freight that calls for a reasonable income on the total amount? Now, then, if you permit a railroad company to increase its stock and bonds for improvements, will they not increase the rate so that it will be unreasonable?

Mr. GAINES of West Virginia. Now, Mr. Chairman, I have said that I would be in favor of permitting such an agreement provided we had a public agency which had publicly demonstrated the fact, by having been a sufficiently long time in existence, that it could protect the public against abuses of such an agreement. The gentleman, when he asks me about the particular question of railroad management, about the question of issuing stock and bonds, and confuses that with the other question about the relation between the present value of the railroad and its cost of construction, gets into a subject that is so large that I can not handle it, even if I had more time than is allotted to me now. It certainly is true that most of the railroads of the country would not cost to reproduce what it cost to build them in the first instance, because of improved machinery at this time.

I am very familiar with railroad construction through sections of the country where such construction is difficult and costly, and I know that in such sections railroads can be built very much cheaper now than they could years ago. But where the just proportion is between what the railroads cost and their present value in computing one of the bases for determining the reasonableness of a rate, and how that ought to enter into the practical question of fixing the rate, is a matter that I am not competent to determine.

Mr. HILL of Connecticut. I would like to ask the gentleman a question. It is well known that there is now and has been a differential rate on the leading trunk lines from Chicago to New York and that this practice has been followed. Does the gentleman think that under the terms of this bill it would be possible for the Commission to find such practice was unfair and unreasonable, and fix a uniform rate, and allow the railroads to distribute and apportion the shipments according to their own judgment? Would the Commission have the power to do that?

Mr. GAINES of West Virginia. I should think not under this bill.

Mr. Chairman, I am in favor of conferring this power not only because such observation, experience, and study as I have had opportunity for have convinced me that it is right, but because I deem such action on the part of Congress at this time a matter of high public policy and expediency. The right—undoubted and unquestioned by those who know—on the part of the public to use the railroads, and the power and duty on the part of the State to protect and regulate that public right are instinctively felt by all, but not clearly understood by all.

On the contrary, this right is by many confused with some kind of socialistic demand for interference with private property and the right of individuals to make their own contracts.

And so many, convinced that there should be mediation between the railroads and the individual shipper and between the railroads and the consuming public, and not clearly distinguishing that railroads are by reason of their public character and their indebtedness to the public different from private enterprises, however great—which are not like railroads, made possible only by the public grant of the public right of eminent domain, and therefore charged with an easement in the public, and justly subject to regulation by law—many persons, I say, failing to make this fundamental but not simple distinction, are beginning to be uncertain whether the Government should not absorb railroads and even other kinds of property in which the public have no easement of any kind and which the public have no business to interfere with or to regulate.

Many, convinced that some greater regulation of railroads is necessary and just, and not seeing clearly the difference in principle, have begun to imagine that they are becoming less attached than formerly to the rights of private property and more tolerant of the socialistic suggestion of State ownership. Let us meet a just demand, violative of no principle, and quiet, to that extent, at least, a socialistic demand for Government ownership, which has no justice and violates all principle. A large part of the feeling we have had in recent times against large wealth and great aggregations of capital engaged in business has been due to the evil we are now seeking to remedy, viz, the unfairness, and the belief in the unfairness, of these public agencies operated by private capital—the railroads of the country.

To envy another's good fortune or great accumulation of wealth, or great achievement of any character, is not American. Only the feeling that great concerns may, not by fair means, but by the favoritism of public agencies, have had an undue preference and received overwhelming advantage, could ever have produced even a sporadic, an occasional, hostility to private property in this country.

The strength, the boast, and the glory of this country is that here there is equality of opportunity. Considered in this light the matter of fair and equal treatment of the public by these quasi public servants, the railroads, becomes more than a mere question of the shipper or consignee and the common carrier. It becomes a question of public right, and the equality of the people in their property rights, and as such is, I verily believe, vitally affecting public opinion with reference to private ownership in this country. This is the most conservative country in the world. Let us by fair and equal laws keep it so. [Applause.]

Mr. HEPBURN. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. CURRIER, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 18588, the railroad-rate bill, and had come to no resolution thereon.

RESERVATION OF HOUSE GALLERY.

Mr. GAINES of West Virginia. Mr. Speaker, I submit the following resolution.

The Clerk réad as follows:

Resolution No. 446.

*Resolved*, That on Wednesday, February 8, the whole of the gallery, except that which is designated as executive, diplomatic, and reporters' galleries, shall be reserved for the use of the families of Senators, Members of the House of Representatives, Delegates, and their visitors. The Doorkeeper shall strictly enforce this order.

The resolution was agreed to.

REGISTRATION OF TRADE-MARKS.

Mr. CURRIER. Mr. Speaker, I present a conference report on the bill (H. R. 16560) to authorize the registration of trademarks used in commerce with foreign nations or among the several States, or with Indian tribes, and to protect the same, to be printed under the rules.

The SPEAKER. The report will be printed under the rule.

JACOB F. FRENCH.

The SPEAKER laid before the House the following message from the President of the United States; which was referred to the Committee on Invalid Pensions, and ordered to be printed:

*To the House of Representatives:*

In compliance with a resolution of the House of Representatives dated the 4th instant (the Senate concurring), I return herewith House bill No. 3286, entitled "An act granting an increase of pension to Jacob F. French."

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 7, 1905.*

SCIENTIFIC SURVEYS AND EXPLORATIONS OF THE PHILIPPINE ISLANDS.

The SPEAKER laid before the House the following message from the President of the United States; which was referred to the Committee on Insular Affairs, and ordered to be printed:

*To the Senate and House of Representatives:*

Circumstances have placed under the control of this Government the Philippine Archipelago. The islands of that group present as many interesting and novel questions with respect to their ethnology, their fauna and flora, and their geology and mineral resources as any region of the world. At my request the National Academy of Sciences appointed a committee to consider and report upon the desirability of instituting scientific explorations of the Philippine Islands. The report of this committee, together with the report of the Board of Scientific Surveys of the Philippine Islands, including draft of a bill providing for surveys of the Philippine Islands, which board was appointed by me, after receiving the report of the committee appointed by the National Academy of Sciences, with instructions to prepare such estimates and make such suggestions as might appear to it pertinent in the circumstances, accompanies this message.

The scientific surveys which should be undertaken go far beyond any surveys or explorations which the government of the Philippine Islands, however completely self-supporting, could be expected to make. The surveys, while of course beneficial to the people of the Philippine Islands, should be undertaken as a national work for the information not merely of the people of the Philippine Islands, but of the people of this country and of the world. Only preliminary explorations have yet been made in the archipelago, and it should be a matter of pride to the Government of the United States fully to investigate and to describe the entire region. So far as may be convenient and practical, the work of this survey should be conducted in harmony with that of the proper bureaus of the government of the Philippines; but it should not be under the control of the authorities of the Philippine Islands, for it should be undertaken as a national work and subject to a board to be appointed by Congress or the President. The plan transmitted recommends simultaneous surveys in different branches of research, organized on a cooperative system. This would tend to completeness, avoid duplication, and render the work more economical than if the exploration were undertaken piecemeal. No such organized surveys have ever yet been attempted anywhere; but the idea is in harmony with modern, scientific, and industrial methods.

I recommend, therefore, that provision be made for the appointment of a board of surveys to superintend the national surveys and explorations to be made in the Philippine Islands, and that appropriations be made from time to time to meet the necessary expenses of such investigation. It is not probable that the survey would be completed in a less period than that of eight or ten years, but it is well that it should be begun in the near future. The Philippine Commission, and those responsible for the Philippine government, are properly anxious that this survey should not be considered as an expense of that government, but should be carried on and treated as a national duty in the interests of science.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *February 7, 1905.*

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

H. R. 18280. An act to extend the western boundary line of the State of Arkansas; and

H. R. 18523. An act making an appropriation for fuel for the public schools of the District of Columbia.

The SPEAKER announced his signature to enrolled bill of the following title:

S. 6450. An act to amend an act entitled "An act authorizing the Winnipeg. Yankton and Gulf Railroad Company to construct a combined railroad, wagon, and foot-passenger bridge across the Missouri River at or near the city of Yankton, S. Dak."

MINORITY REPORT ON BANKRUPTCY BILL.

The SPEAKER. The Chair will state that the gentleman from Maine [Mr. LITTLEFIELD] has asked that unanimous consent be granted him that he may be given until Thursday next to file a minority report on a bankruptcy bill. Is there objection?

There was no objection, and it was so ordered.

Mr. HEPBURN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 5 o'clock and 35 minutes p. m.) the House adjourned until to-morrow at 11 o'clock a. m.

## EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of the Treasury, recommending legislation to permit an exchange of site for the public building at Nevada, Mo.—to the Committee on Public Buildings and Grounds, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a copy of a communication from the Secretary of the Interior submitting an estimate of appropriation for service of the Patent Office—to the Committee on Appropriations, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a

copy of a communication from the Secretary of the Interior submitting an estimate of appropriation for additional employees in the Patent Office—to the Committee on Appropriations, and ordered to be printed.

A letter from the Secretary of the Treasury, transmitting a copy of a communication from the Secretary of War submitting an estimate of appropriation for sea wall for protection at Sandy Hook—to the Committee on Appropriations, and ordered to be printed.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. GILLETT of California, from the Committee on the Judiciary, to which was referred the bill of the Senate (S. 285) to divide the State of Oregon into two judicial districts, reported the same without amendment, accompanied by a report (No. 4404); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. HULL, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 16289) to empower the Secretary of War to allow burial of wives of deceased enlisted men in national cemeteries in the same graves as deceased soldiers, reported the same with amendment accompanied by a report (No. 4405); which said bill and report were referred to the House Calendar.

Mr. GROSVENOR, from the Committe on the Merchant Marine and Fisheries, to which was referred the bill of the House (H. R. 18197) to amend section 4463 of the Revised Statutes, relating to the complement of crews of vessels, reported the same with amendment, accompanied by a report (No. 4406); which said bill and report were referred to the House Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 18198) to amend sections 4417, 4453, 4488, and 4499 of the Revised Statutes, relating to the Steamboat-Inspection Service, and section 5344 of the Revised Statutes, relating to misconduct by officers or owners of vessels, reported the same with amendment, accompanied by a report (No. 4407); which said bill and report were referred to the House Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 18200) to amend section 4414 of the Revised Statutes of the United States, reported the same without amendment, accompanied by a report (No. 4408); which said bill and report were referred to the House Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 18202) to amend sections 4415, 4416, 4423, 4426, 4449, 4452, 4470, 4472, 4498, and 4233 of the Revised Statutes of the United States, relating to steamboat inspection, reported the same without amendment, accompanied by a report (No. 4409); which said bill and report were referred to the House Calendar.

Mr. BURKE, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 18513) to extend the time for the commencement and completion of a bridge across the Missouri River at or near Pierre, S. Dak., reported the same without amendment, accompanied by a report (No. 4410); which said bill and report were referred to the House Calendar.

Mr. TOWNSEND, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 18728) to authorize the board of supervisors of Berrien County, Mich., to construct a bridge across the St. Joseph River near its mouth, in said county, reported the same with amendment, accompanied by a report (No. 4411); which said bill and report were referred to the House Calendar.

Mr. SMITH of Kentucky, from the Committee on the Judiciary, to which was referred the bill of the Senate (S. 4503) to provide for sittings of the circuit and district courts of the southern district of Florida in the city of Fernandina, in said district, reported the same with amendment, accompanied by a report (No. 4414); which said bill and report were referred to the House Calendar.

Mr. GROSVENOR, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the House (H. R. 18196) to amend section 4405 of the Revised Statutes of the United States, reported the same with amendment, accompanied by a report (No. 4415); which said bill and report were referred to the House Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 18201) to amend sections 4418, 4433, 4489, and 4483 of the Revised Statutes, and to repeal sections 4435, 4436, and 4459 of the Revised Statutes, all relating to the Steamboat-Inspection Service, reported the same with amendment, accompanied by a report (No. 4416); which said bill and report were referred to the House Calendar.

## REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. SHACKLEFORD, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 18688) authorizing the President to appoint S. J. Call surgeon in the Revenue-Cutter Service, reported the same without amendment, accompanied by a report (No. 4412); which said bill and report were referred to the Private Calendar.

Mr. CURTIS, from the Committee on Ways and Means, to which was referred the bill of the House H. R. 17271, reported in lieu thereof a bill (H. R. 18816) for the relief of the estate of James Mitchell, deceased, accompanied by a report (No. 4417); which said bill and report were referred to the Private Calendar.

## ADVERSE REPORTS.

Under clause 2, Rule XIII,

Mr. SLAYDEN, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 11686) to remove the charge of desertion against Ernest Brockelman and to grant him an honorable discharge, reported the same adversely, accompanied by a report (No. 4413); which said bill and report were ordered laid on the table.

## PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. JENKINS: A bill (H. R. 18810)) to authorize the issuance of special bench warrants in certain criminal cases—to the Committee on the Judiciary.

By Mr. CONNELL: A bill (H. R. 18811) to guarantee the interest on the bonds of the Akron, Sterling and Northern Railroad Company, and for other purposes—to the Committee on the Territories.

By Mr. McCARTHY: A bill (H. R. 18812) establishing that portion of the boundary line between the State of South Dakota and the State of Nebraska south of Union County, S. Dak.—to the Committee on the Judiciary.

By Mr. CRUMPACKER: A bill (H. R. 18813) to provide for the appointment of an additional district judge in the district of Indiana, for the establishment of judicial divisions in said district, and so forth—to the Committee on the Judiciary.

By Mr. BEDE: A bill (H. R. 18814) to change the name of Jackson street in the northeast section of the District of Columbia—to the Committee on the District of Columbia.

By Mr. PUJO: A bill (H. R. 18815) to authorize the construction of a bridge across Red River at or near Boyce, La.—to the Committee on Interstate and Foreign Commerce.

By Mr. LOUDENSLAGER: A bill (H. R. 18817) to amend an act for the prevention of smoke in the District of Columbia, and for other purposes, approved February 2, 1899—to the Committee on the District of Columbia.

By Mr. BASSETT: A bill (H. R. 18818) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898—to the Committee on the Judiciary.

By Mr. MANN: A resolution (H. Res. 488) for the employment of a stenographer in the office of the journal clerk—to the Committee on Accounts.

By Mr. CAPRON: Memorial of the general assembly of the State of Rhode Island, recommending to Congress the passage of an act for a more efficient inspection of steamships and other vessels—to the Committee on Interstate and Foreign Commerce.

By Mr. ADAMS of Pennsylvania: Memorial from the Philadelphia Board of Trade, relative to interstate-commerce laws, etc.—to the Committee on Interstate and Foreign Commerce.

By the SPEAKER: Memorial from the legislature of the State of Colorado, relative to the interstate-commerce laws—to the Committee on Interstate and Foreign Commerce.

By Mr. BROWN of Wisconsin: Memorial from the legislature of the State of Wisconsin, concerning the readjustment of the tariff—to the Committee on Ways and Means.

## PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. CURTIS, from the Committee on Ways and Means: A bill (H. R. 18816) for the relief of the estate of James Mitchell, deceased—to the Private Calendar.

By Mr. BONYNGE: A bill (H. R. 18819) granting an increase of pension to Oliver S. McLain—to the Committee on Invalid Pensions.

By Mr. COUSINS: A bill (H. R. 18820) granting an increase of pension to William H. Morse—to the Committee on Invalid Pensions.

By Mr. CROFT: A bill (H. R. 18821) granting an increase of pension to Michael J. Geary—to the Committee on Invalid Pensions.

By Mr. GILLESPIE: A bill (H. R. 18822) for the relief of the estate of Andrew J. Joyce, deceased—to the Committee on War Claims.

By Mr. PATTERSON of Tennessee: A bill (H. R. 18823) granting an increase of pension to Calvin B. Fowlkes—to the Committee on Invalid Pensions.

By Mr. SIMS: A bill (H. R. 18824) granting a pension to Nimrod W. Watson—to the Committee on Invalid Pensions.

By Mr. TRIMBLE: A bill (H. R. 18825) granting a pension to Harriet A. Duvall—to the Committee on Invalid Pensions.

By Mr. WACHTER: A bill (H. R. 18826) granting an increase of pension to James W. Fowler—to the Committee on Invalid Pensions.

Also, a bill (H. R. 18827) for the relief of the heirs of William Henry Saddler—to the Committee on Claims.

By Mr. WILLIAMS of Mississippi: A bill (H. R. 18828) granting a pension to Maria Elizabeth Posey—to the Committee on Pensions.

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## PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Petition of N. P. Rosengrant et al., Patriotic Order Sons of America, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. ACHESON: Petition of the Young Women's Christian Temperance Union of Newcastle, Pa., for an amendment to the statehood bill extending the limit of liquor prohibition to twenty-one years—to the Committee on the Territories.

By Mr. ADAMS of Pennsylvania: Petition of the State Horticultural Association, in Harrisburg, Pa., favoring bill H. R. 14098—to the Committee on Agriculture.

Also, petition of the Trades League of Philadelphia, Pa., favoring the establishment of the pneumatic-tube service for transmission of mail matter in Philadelphia—to the Committee on the Post-Office and Post-Roads.

Also, petition of the Philadelphia Board of Trade, favoring bill S. 6291—to the Committee on the Merchant Marine and Fisheries.

By Mr. BRUNDIDGE: Petition of the Judsonia Fruit Growers' Association, against unjust discrimination in tariff rates—to the Committee on Interstate and Foreign Commerce.

Also, petition of citizens of Batesville, Ark., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. BURKETT: Petition of C. W. Bronson Lodge, No. 487, Brotherhood of Railway Trainmen, held at McCook, Nebr., favoring bill H. R. 704—to the Committee on the Judiciary.

By Mr. COOPER of Pennsylvania: Petition of Cleveland Chamber of Commerce, favoring the material granite for public buildings in Cleveland—to the Committee on Public Buildings and Grounds.

Also, petition of the Trades League of Philadelphia, favoring the Foraker amendment to bill H. R. 17865—to the Committee on the Post-Office and Post-Roads.

By Mr. DALZELL: Petition of the Trades League of Philadelphia, favoring pneumatic post-office service—to the Committee on the Post-Office and Post-Roads.

Also, petition of Rev. B. M. Sharp et al., for recognition of Almighty God in the Constitution—to the Committee on the Judiciary.

By Mr. FITZGERALD: Petition of the New York Annual Convention for Road Improvement, favoring national road building—to the Committee on Agriculture.

Also, petition of the National Association of Agricultural Implement and Vehicle Manufacturers, favoring repeal of commutation clause of the homestead act—to the Committee on the Public Lands.

By Mr. FIELD: Paper to accompany bill for relief of L. L. Godfrey—to the Committee on Pensions.

By Mr. GIBSON: Petition of Hall Unity Grange, Patrons of Husbandry, No. 1113, favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. KEHOE: Petition of Daniel Boone Division, No. 489, Brotherhood of Locomotive Engineers, of Covington, Ky., favoring bill H. R. 7041—to the Committee on the Judiciary.

Also, petition of E. K. Klank et al., Foster, Ky., favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. KELIHER: Petition of Division No. 61, Brotherhood of Locomotive Engineers, of Boston, Mass., favoring pensions for army engineers—to the Committee on Invalid Pensions.

Also, petition of the Illinois Lumber Dealers' Association, favoring national regulation of railway rates—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Interstate Commerce Law Convention, St. Louis, October 28–29, 1904, against unjust discrimination in railway rates—to the Committee on Interstate and Foreign Commerce.

Also, petition of Lodge No. 97, Brotherhood of Railway Trainmen, favoring bill H. R. 7041—to the Committee on the Judiciary.

Also, petition of the Gloucester Master Mariners' Association, for Point Judith breakwater—to the Committee on Rivers and Harbors.

Also, petition of the Carriage Builders' National Association, favoring enlargement of the powers of the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

By Mr. KNOWLAND: Petition of the California State Federation of Labor, relative to rules governing leave of absence granted navy-yard employees—to the Committee on Labor.

Also, petition of the California State Federation of Labor, protesting against proposed reduction in the tariff on cigars from the Philippines—to the Committee on Ways and Means.

By Mr. LITTLEFIELD: Petition of citizens of Maine, favoring a parcels-post law—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Maine, against repeal or change of the Grout oleomargarine bill—to the Committee on Agriculture.

By Mr. MARTIN: Petition of the Sisseton Agency, S. Dak., favoring bill H. R. 4072—to the Committee on the Judiciary.

By Mr. MILLER: Petition of W. W. Loveless et al., of Marion, Kans., against a parcels-post law—to the Committee on the Post-Office and Post-Roads.

By Mr. OTJEN: Petition of members of Subdivision No. 405 of the Brotherhood of Locomotive Engineers, favoring a law to make three years' experience as fireman necessary for one to act as engineer—to the Committee on the Judiciary.

By Mr. PATTERSON of Pennsylvania: Petition of Washington Camp, No. 85, Patriotic Order Sons of America, of Welshample, Pa., for restriction of immigration—to the Committee on Immigration and Naturalization.

Also, petition of citizens of Schuylkill County, Pa., for the 3d day of September as a legal holiday in commemoration of the signing of the treaty of Paris—to the Committee on the Judiciary.

By Mr. PORTER: Petition of the Woman's Christian Temperance Union of Allegheny County, Pa., against repeal of the canteen law—to the Committee on Military Affairs.

Also, petition of the Woman's Christian Temperance Union of Allegheny County, Pa., favoring bill H. R. 4072—to the Committee on the Judiciary.

By Mr. RIDER: Petition of the Merchants' Association of New York City, favoring abolition or material reduction of tariff on Philippine products—to the Committee on Ways and Means.

Also, petition of the Merchants' Association of New York City, favoring legislation to regulate towing in New York Harbor—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Colorado beet-sugar manufacturers, against reduction of duty on raw or refined sugar imported to the United States—to the Committee on Ways and Means.

By Mr. RUPPERT: Petition of United Harbor No. 1, American Association of Masters and Pilots of Steam Vessels, against the Littlefield bill (H. R. 7298)—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the Sixth Annual Convention in Interest of Road Improvement, favoring national aid in road building—to the Committee on Agriculture.

Also, petition of Gustav H. Schwab, of the New York Board

of Trade and Transportation, relative to bill S. 2262—to the Committee on Interstate and Foreign Commerce.

By Mr. RYAN: Petition of the Manufacturers' Association of New York, relating to forging trade-marks—to the Committee on Patents.

Also, petition of United Harbor No. 1, American Association of Masters and Pilots of Steam Vessels, opposing bill H. R. 7298—to the Committee on the Merchant Marine and Fisheries.

By Mr. WANGER: Petition of Washington Camp, No. 502, Patriotic Order Sons of America, of Norristown, Pa., for restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. WACHTER: Paper to accompany bill for relief of James W. Fowler—to the Committee on Invalid Pensions.

By Mr. WARNOCK: Petition of the York Township Protective Association, favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. WEISSE: Paper to accompany bill for relief of Nathaniel Cooper—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Andrew Schmidt—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Julius Beyer—to the Committee on Invalid Pensions.

Also, petition of Jacob Binder et al., favoring maximum output of 2,500 barrels of beer on special tax of $50 per annum—to the Committee on Ways and Means.

## SENATE.

### WEDNESDAY, *February 8, 1905.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. KEAN and by unanimous consent, the further reading was dispensed with.

#### TRANSFER OF CLERKS IN POST-OFFICE DEPARTMENT.

The PRESIDENT pro tempore laid before the Senate a communication from the Postmaster-General, transmitting, in response to a resolution of the 27th ultimo, a letter from the Acting Second Assistant Postmaster-General and a copy of a memorandum from the Acting Fourth Assistant Postmaster-General, relative to the number of clerks in the Post-Office Department performing other work and who will be affected by new legislation; which, with the accompanying papers, was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

#### STEAMER "DAVENTRY."

The PRESIDENT pro tempore laid before the Senate a communication from the Acting Secretary of Commerce and Labor, transmitting additional information in the matter of an application for the registry of the foreign-built steamer *Daventry;* which was referred to the Committee on Commerce, and ordered to be printed.

#### ST. JOHNS RIVER (FLORIDA) IMPROVEMENT.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of the 31st ultimo, estimates prepared by Capt. Francis R. Shunk, Corps of Engineers, the officer in charge of the improvement of St. Johns River, relating to the cost of obtaining a depth of 24 feet of water in that river, etc.; which, with the accompanying paper, was referred to the Committee on Commerce, and ordered to be printed.

#### ELECTORAL VOTES.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of State, transmitting the final ascertainment of electors for President and Vice-President for the State of Nevada; which, with the accompanying paper, was ordered to be filed.

#### ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. C. R. MCKENNEY, its enrolling clerk, announced that the Speaker of the House had signed the following enrolled bills and joint resolution; and they were thereupon signed by the President pro tempore:

S. 6450. An act to amend an act entitled "An act authorizing the Winnipeg, Yankton and Gulf Railroad Company to construct a combined railroad, wagon, and foot-passenger bridge across the Missouri River at or near the city of Yankton, S. Dak.;"

H. R. 18280. An act to extend the western boundary line of the State of Arkansas;

H. R. 18523. An act making an appropriation for fuel for the public schools of the District of Columbia; and

H. J. Res. 185. Joint resolution authorizing and directing the Director of the Census to collect and publish additional statistics relating to cotton.

#### PERSONAL EXPLANATION.

Mr. KEARNS. Mr. President, I rise to a question of personal privilege.

In the first vote on the amendment of the Senator from California [Mr. BARD] last evening I voted "nay" in a distinct manner. It appears the clerks misunderstood me and I was numbered among those favoring the amendment. My colleagues called my attention to the error and I was on the point of correcting it when it was suggested I could do so on the vote to concur in the amendment before the final passage of the bill, in case the amendment should be adopted. This course I pursued.

The seriousness of this matter did not impress itself upon me until this morning, when I read in the public press the statement that I had voted for the amendment in order that I might force the managers of the bill to accept my amendment ceding the Arizona strip to Utah. This I deny in the most positive manner. Such a proceeding I would not countenance nor be a party to. My word had been given the managers of the bill that I would support their measure, and I would not have played them false for the whole Territory of Arizona.

If this be the proper time, Mr. President, I desire to have the record corrected as far as it relates to my vote upon the amendment of the Senator from California in accordance with this statement.

Mr. NELSON. Mr. President, I desire to state in this connection that I was sitting here in my seat, and I heard distinctly the Senator from Utah [Mr. KEARNS] vote "nay" on that proposition, as he has just stated, and I think every Senator in this row can vouch for the same thing. I was very much surprised when the Secretary read his vote as voting in the affirmative, as I heard him distinctly vote in the negative.

Mr. CLARK of Wyoming. Mr. President, during the time of that occurrence I sat as near the Senator from Utah as I sit now, within 4 feet. His vote was given "nay," distinctly, as he has stated.

Mr. FORAKER. Mr. President, merely to show that the recording clerk was not at fault, in my opinion, I should state that I was sitting at my desk keeping a tally of the vote, and when the Senator from Utah announced his vote I wrote his name down as voting "yea." It was a clear vote of "yea" as it sounded in this part of the Chamber. After I learned that there was a controversy about it, I made inquiry of a number of Senators sitting around me, and every one who expressed himself on the subject expressed himself as understanding that the vote was "yea."

Of course, if the Senator says it was "nay," we accept his statement about it; but the recording clerk is not at fault, I am sure, if the sound came to him as it did to this part of the Chamber. Not only that, but Senators who sat nearer to the Senator than I sat made the same statement, that they understood his vote to be "yea."

Mr. GALLINGER. Mr. President, I have no controversy with the Senator from Utah. If he made a mistake in casting his vote, I have done that myself. But I was keeping a record, listening very intently to each vote. My record tallies with that of the clerks, and to my ears the Senator from Utah voted distinctly "yea." Of course, if the Senator says that he did vote "nay" I have no hesitancy in accepting that statement; but there certainly was good reason for the clerks to record the vote as they did, unless my ears were much more treacherous than they ordinarily are.

Mr. QUARLES. Mr. President, at the time the vote in question was being taken I occupied my seat here, just two seats removed from that of the Senator from Utah, and when he voted I heard him distinctly answer "nay." It was not a loud vote, but it was heard here distinctly. Immediately when he was recorded by the clerks as voting "yea" several of us called his attention at once to the fact and requested him to correct the record according to the vote he had actually given.

Mr. CLAPP. Mr. President, certainly this is a matter to be regretted. Not intended as any criticism on the clerks, but in justice to the Senator from Utah, I will state that I was sitting next to him at the time and heard him say "nay" as distinctly to my knowledge as I ever heard a man make any expression. That is corroborated by the fact that the Senator from Indiana [Mr. BEVERIDGE] immediately came here and importuned him to have the record changed, which bears out the statement of the Senator from Utah.

Mr. KITTREDGE. Mr. President, when the Senator from Utah [Mr. KEARNS] cast his vote on the matter in question I was sitting next to him. I heard him clearly and distinctly state that he voted "nay" on the proposition.